Supreme Court, U.S.
FILED

031555 MAY 17 2004

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

DONNA JEANNE MOSS,
Plaintiff-Appellant-Petitioner

v.

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, THE BOARD OF EDUCATION OF THE GREATER AMSTERDAM SCHOOL DISTRICT, ARTHUR P. COTUGNO, CLAIRE LUDWIN, MICHAEL DECKER, DANIEL DE ROSSI, CHARLES FERRIS, MARK A. MILLER, as Voluntary Administrator of the Estate of JOHN MILLER, Deceased, FRANK PERSICO, EMANUEL ROSEN, RONALD LIMONCELLI, in both their Official and Personal Capacities,
Defendants-Appellees-Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Petition for A Writ of Certiorari

Donna J. Moss, Ph.D.
288 Lucas Avenue
Kingston,N.Y. 12401
(845)-338-8395
Pro se

QUESTIONS

1. Does the mere fact that a discharged Title VII plaintiff was replaced by a person outside of her protective class always and in and of itself constitute a circumstance giving rise to an inference of discrimination such as to satisfy the *fourth prong* criterion at the *prima facie* case stage of the *McDonnell Douglas* analysis for the purposes of summary judgement proceedings?

2. Is it reversible error for an Appellate Court to completely omit that stage of the *McDonnell Douglas/ Reeves* analysis in which the plaintiff attempts to demonstrate that there are genuine issues of material fact with respect to the falsity and mendacity *per se* of the employer's articulated termination reason?

3. Did the Second Circuit's decision in petitioner Moss' case misstate the law in conflict with the holdings in *McDonnell Douglas*, *Burdine*, *St. Mary's Honor Center*, *Reeves* and the Eleventh, Ninth, Fifth, and First Circuits?

4. Were petitioner Moss' §§ 1981 & 1983 claims of retaliation for protected speech against defendants in their personal capacity erroneously dismissed in that they were couched in terms of compensable harms distinguishable from those addressed by petitioner's Title VII claims?

5. Did the Second Circuit's disposition of petitioner Moss' claims by a decision and Order which expressly states that it cannot be cited as "precedential authority" violate her right to due process and/or to a jury trial (i.e., does petitioner have a constitutional right to have the final disposition of her civil rights claims made by a decision which can be cited as precedential authority for the correct statement and application of the law)?

TABLE OF CONTENTS

Page No.

STATEMENT OF THE CASE.....1
A. Background.....1
B. Proceedings Below.....1
C. Jurisdiction Of The Courts Below.....1
REASONS THE PETITION SHOULD BE GRANTED.....2

I. FOURTH PRONG OF MOSS' PRIMA FACIE CASE.....2

II. NEXUS: PRIMA FACIE CASE OF RETALIATION.....4
A. The 14 February Evaluation Subject Matter Nexus.....5
B. Temporal (And Related Subject Matter) Nexi.....6

III. THE PRETEXT STAGE.....9
A. FALSITY AND MENDACITY PER SE.....9
Summary of Evidentiary Issues.....10
Re. The Interpersonal Relationships Termination Reason.....12
1. The Five Employees Named On The March 1991 RDDIR.....12
(a). John Quatrini.....12
(b). Abdel Sharifi.....12
(c). Paul DiMascio.....13
(d). Jayne Steubing.....13
(e). Margery Zucker.....14

Page No.

2. Employees Mentioned For The First Time In 2001.....14
(a). Richard Jankunas.....15
(b). Joanne Spagnola.....15
(c). Jan Dyer.....16
(d). Gavin Murdoch.....16
(e). Ronald Limoncelli.....16
(f). John Giovanni.....17
(g). Pam Ruf.....17
(h). Charles Caruso.....18
3. Concentration On Curriculum.....19
4. Program Evaluation.....19
5. Middle School.....20
6. Motivation And Recognition Of Others.....21
7. Knowledge Of Curriculum.....21
8. Gifted And Talented Program.....21
9. Alternative Education Program.....22
10. Time Out Of District.....22

Conclusion As To Falsity Of Termination Reasons.....23

B. THE PRE-REEVES FALSITY *PLUS* STANDARD.....23

IV. MOSS' "ADDITIONAL EVIDENCE".....25

A. "ADDITIONAL EVIDENCE" RE. RACE CLAIM.....25

B. "ADDITIONAL EVIDENCE" OF SEX CLAIM.....28

C. "ADDITIONAL EVIDENCE" OF RETALIATION.....30

V. FREE SPEECH PERSONAL CAPACITY CLAIM.....30

Page No.

VI. NON-PRECEDENTIAL NATURE OF DECISION.....30

TABLE OF AUTHORITES

Page No.

Conway v. Electro Switch Corp.,
825 F.2d 593 (1st Cir.1987).....26

Fisher v. Vassar College,
114 F.3d 1332 (2nd Cir 1997)
(*en banc*).....24

Jeffries v. Harris City Comm. Action Ass'n,
615 F.2d 1025 (5th Cir.1980).....3

McDonnell Douglas Corp. v. Green,
411 U.S. 792 (1973).....9, 10

Meeks v. Computer Associates Intern.,
15 F.3d 1013 (11th Cir. 1994).....4

Reeves v. Sanderson Plumbing, Inc.
530 U.S. 133 (2000).....3, 10, 16, 18
19, 20, 21
22, 24, 25

St. Mary's Honor Center v. Hicks,
509 U.S. 502 (1993).....25

Texas Dept. of Community Affairs v. Burdine,
450 U.S. 248 (1980).....4

Washington v. Garrett,
10 F.3d 1421 (9th Cir. 1993).....26

CONSTITUTIONAL AMENDMENTS, STATUTES, AND RULES

	Page No.
Fourteenth Amendment	A-12, A-28, A-29
42 U.S.C.A. Sect. 2000e-1 Title VII, Sect. 703	1, A-4, A-12, A-15, A-24, A-28, A-30
42 U.S.C.A. Sect. 2000e-2 Title VII; Sect. 704	1, 30, A-4, A-12, A-15, A-24, A-28, A-30
42 U.S.C.A. §1981	1, 30, A-4, A-12, A-28, A-29
42 U.S.C.A. §1983	1, 30, A-4, A-12, A-28, A-29
Human Rights Law	A-12, A-31
Fed.R.Civ. Pro. 56	A-13, A-32,
Northern District of New York Local Rule 7.1(a)	A-33

APPENDIX

Page No.

Second Circuit Order Denying Petition For Rehearing *En Banc*.....A-1
Second Circuit Order Upholding The Decision Of The District Court.....A-3
Second Circuit Order Waiving Oral Argument.....A-6
Moss' Notice of Appeal.....A-7
Dockets Re. Defendants Motion For Costs.....A-8
District Amended Final Judgment.....A-9
District Memorandum – Decision And Order.....A-11
Mandate Issued As To Petition For Mandamus.....A-26
Amended Complaint [1st page].....A-28
Laws, Statutes, And Rules.....A-29
Amendment XIV.....A-29
42 U.S.C.A. § 1981.....A-29
42 U.S.C.A. § 1983.....A-29
Title VII Of The Civil Rights Act Of 1964.....A-30

Art. 1.5 Human Rights Law §296.....A-31
Fed.R.Civ.P. 56.....A-32
Local Rule N.D.N.Y. 7.1(a).....A-33
Submissions Pursuant To Docket #412.....A-34
Admitted Statements – L.R. 7.1(a)(3) Statements.....A-36
L.R. 7.1 Admitted Re. Termination Reasons...A-54
GASD's L.R. 7.1 Admissions.....A-80
GASD's L.R. 7.1 Admissions Re. Termination.....A-84
Cotugno's L.R. 7.1 Admissions.....A-91
Cotugno's L.R. 7.1 Admissions Re. Termination.....A-94

Page No.

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT.....A-102
E-2: BROWN AFFIDAVIT.....A-133
E-3: SEAVEY AFFIDAVIT.....A-147
E-4: RIVERA AFFIDAVIT.....A-153
E-5: BUSH AFFIDAVIT.....A-155
E-6: AFFIDAVIT RE. RUF V. GASD.....A-160
E-7: MOSS INTERROGATORY RESPONSES.....A-162
E-8: GASD INTERROGATORY RESPONSES.....A-186
E-9: TIME OUT OF DISTRICT.....A-194
E-10: MIDDLE SCHOOL AFFIDAVIT.....A-197
E-11: ALTERNATIVE EDUCATION PROGRAM AFFIDAVIT.....A-205
E-12: GIFTED AND TALENTED PROGRAM AFFIDAVIT.....A-209
E-13: INTERPERSONAL RELATIONS AFFIDAVIT.....A-216
E-14: AFFIDAVIT RE. COMPARATIVE QUALIFICATIONS.....A-233
E-15: MOSS DEPOSITION.....A-237
E-16: COTUGNO DEPOSITION.....A-241
E-17: MOSS SUPPLEMENTAL AFFIDAVIT.....A-248

OPINIONS BELOW

The 18 February 2004 Order denying panel and *en banc* rehearing is unpublished and is reproduced at **A-1**.

The Summary Order issued by the U.S. Court of Appeals for the Second Circuit panel, Hon Dennis Jacobs, Hon. Chester J. Straub, and Hon. Barrington D. Parker, Circuit Judges, which is the object of the present petition for a writ of certiorari is unpublished and identified as Docket No. 03-7342, and is reproduced at **A-2**.

The Second Circuit Order granting petitioner Moss' motion requesting that there be no oral argument in the case is unpublished and is reproduced at **A-6**.

The United Stated District Court for the Northern District of New York's Memorandum-Decision and Order affirmed by the Second Circuit is unpublished, is identified as District Docket No. 437, and is reproduced at **A-11**.

JURISDICTION

Basis For Jurisdiction Of The Supreme Court

The judgement of the Court of Appeals was entered on 2 December 2003 [A-2]. A timely petition for panel rehearing and rehearing *en banc* was denied on 18 February 2004 [A-1]. The jurisdiction of this Court is invoked under 28 U.S.C.A. §1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The pertinent Constitutional provisions statutes and regulations (accompanied by the page in the Appendix where they are reproduced) are:

Amendments of the Constitution of the United States;

14th Amendment.....		A-29
42 U.S.C.A. Sect. 2000e-1	Title VII, § 703	A-30
42 U.S.C.A. Sect. 2000e-2	Title VII; § 704	A-30
§ 1981		A-29
§ 1983		A-31
Human Rights Law		A-31
Fed.R.Civ. Pro. 56		A-32
Northern District of New York Local Rule 7.1		A-33

STATEMENT OF THE CASE

A. Background:

On 16 October 1989 Petitioner Donna Jeanne Moss, Ph. D., a white female married to a black male was hired as Interim Director of Instruction for the Enlarged City School District of the City of Amsterdam [hereinafter referred to as GASD (Greater Amsterdam School District) or "the District"]. Dr. Moss filed a Complaint with the NYS Division of Human Rights in May 1992 alleging sex and race discrimination and (in August 1992) retaliation in an Amended Complaint. Dr. Moss was terminated from her employment in the GASD as of 30 June 1992.

B. Proceedings Below:

In 1995 Dr. Moss, her case having languished in the NYS Division of Human Rights system for 3 years, filed federal claims of race and sex discrimination and retaliation against GASD under Title VII and §§1981 and 1983 claims against the defendants/respondents in their personal capacities in September 1995.

C. Jurisdiction Of The Courts Below:

1. The District Court of the Northern District of New York had jurisdiction over plaintiff's claims under 28 U.S.C. A. §1331 and its exercise of supplemental jurisdiction over those of plaintiff's claims arising under Human Rights Law and the New York State Constitution.

2. Court of Appeals for the Second Circuit assumed jurisdiction pursuant to 28 U.S.C.A. §1291 when Notice of Appeal had been filed and proof that the District Court for the N.D.N.Y. had entered final judgment was provided [A–7 and A-8].

MAY IT PLEASE THE COURT,

Donna Jeanne Moss hereby respectfully petitions this Honorable Court for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

REASONS THE PETITION SHOULD BE GRANTED

I. FOURTH PRONG OF MOSS' *PRIMA FACIE* CASE

Petitioner Moss proffered uncontested evidence that she is **1).** a white interracially married female (married to a black male) [A-131 & A-253], **2.)** had an administrator's certificate [A-103] and a Ph.D. [A-131] (i.e., was qualified for the position she held and those for which she applied), **3.)** was terminated [A-122], and **4.)** was replaced with respect to the Director of Instruction position which she held and was passed over for hiring [A-129] with respect to the Director of Elementary [A-123] and the Director of Secondary [A-124] positions for which she applied [A-52, ¶{109}; A-93; A-125-A-129] by persons (the non-interracially married male Trzaskos and female Dyer respectively) outside her protected class of interracially married person [A-233, ¶45; A-184, 90].

The U.S. District Court Northern District of N.Y found that:

> "It is with the fourth prong of the test, that her discharge occurred in circumstances giving rise to an inference of discrimination, where Plaintiff's argument falls short of demonstrating a prima facie case." [A-16].

The Second Circuit upheld the above finding stating that,

> "The District Court found that Moss had merely provided conclusory allegations and anecdotal evidence." [A-5]

The Second Circuit's decision is clearly erroneous and conspicuously in conflict with the explicit holding of the Supreme Court in *Reeves*. Specifically,

> "First, the plaintiff must establish a *prima facie* case (cite omitted)....It is undisputed that petitioner satisfied this burden here: (i). at the time he was hired he was a member of a protected class...(ii). he was otherwise qualified for the position, (iii). he was discharged by the respondent...(iv). respondent successsively hired three persons in their thirties to fill petitioner's position." *Reeves v. Sanderson Plumbing Inc.*, 530 U.S. 133, 142 (2000).

In addition to her race case, Dr. Moss similarly also made a *prima facie* case of sex discrimination as to the Elementary position and sex and race discrimination combined as to the Elementary and Secondary Directors positions [A-192 (GASD's Response to Interrogatory No. 53)]. In this the Second Circuit also conflicts with the Fifth Circuit:

> "We agree with Jefferies that the district court improperly failed to address her discrimination on the basis of both race and sex. The essence of Jefferies' argument is that an employer should not escape from liability for discrimination against black females by showing that it does not discriminate against blacks and that it does not discriminate against females. We agree that discrimination against black females can exist even in the absence of discrimination against black men or white woman." *Jeffries v. Harris City Comm. Action Ass'n*, 615 F.2d 1025, 1032 (5th Cir. 1980).

II. NEXUS: PRIMA FACIE CASE OF RETALIATION

The Second Circuit panel decision conflicts with the holdings of the Eleventh Circuit in that it failed to find that Dr. Moss' proffered evidence of both subject matter connections and temporal connections singly or in combination constitute several nexi and/or taken all together one nexus.

> "As we explained in *Reichhold Chem.*, we interpret 'the causal link requirement broadly; a Plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated.' 988 F.2d at 1571-72 (citing *Simmons v. Camden County Bd. of Ed.*, 757 F.2d 1187, 1189 (11th Cir.), cert. denied, 474 U.S. 981, 106 S.Ct. 385, 88 L.Ed.2d 338 (1985)." *Meeks v. Computer Associates Intern.*, 15 F.3d 1013, 1021 (11th Cir. 1994).

The Second Circuit holding **also conflicts with** *Burdine*'s holding that "the burden of establishing a *prima facie* case is not onerous" [*Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1980)] in that the Circuit panel made it "onerous" and beyond *de minimus* for Dr. Moss to make her *prima facie* case of retaliation by making it "onerous" and beyond *de minimus* to demonstrate the constituent nexus component of her *prima facie* case. The Eleventh Circuit criterion [*supra*] is consistent with the non-onerous, *de minimus* burden at the *prima facie* case stage.

Taken altogether (**as opposed to piecemeal**) Dr. Moss' showing of nexus in **¶¶1-25** that follows rises **far above** the *de minimus*/"non-onerous" standard of establishing a *prima facie* case such that a juror would not be irrational to find that there was a causal connection between Moss' efforts to correct discrimination and her termination.

A. The 14 February Evaluation Subject Matter Nexus

The programs and activities that Mr. Cotugno criticized on her 14 February 1992 Evaluation [A-111; A-21], the RDDIR explanation [A-116], and the 17 June 1992 termination letter [A-120] and articulated as termination reasons were among (i.e., had a connection to and were certainly not "completely unrelated to" {*Meeks* at 1021}) those programs and activities in which Dr. Moss was involved in efforts to correct racial discrimination, including circumstances which had disparate affects on minority Hispanic and black students. Specifically, there is evidence of subject matter "nexus" as to termination reasons regarding the following.

1. Interpersonal Relationships Termination Reason Nexus. Superintendent Cotugno **admitted** that what he reported to NYSDHR and articulated in his interrogatory termination reasons as being Dr. Moss' "interpersonal difficulties" with Director of Pupil Services Quatrini actually referred to Moss' correction of the discriminatory misplacement of Hispanic and Black students [A-43, ¶{41} and ¶{42}; A-92; A-42, ¶{35}; A-178 (e.g.); A-54, ¶[4]; A-91; A-111; and A-116]. This demonstrates a clear, strong, and in fact repeatedly admitted subject matter nexus between Dr. Moss' efforts to correct discrimination and respondents "interpersonal relationships" termination reason.

Petitioner also demonstrated subject matter (and temporal) nexi with respect to the following reasons:

2. Middle School termination reason [A-71, ¶[110] & ¶[111]; A-98; A-108, ¶4; A-109, ¶2; A-140, ¶¶61-62; A-111, ¶4].

3. Alternative Education Program termination reason (aka "Project Pride") [A-208; A-107, ¶4 – A-108].

4. And more generally as to the nexus with respect to Cotugno's unparticularized criticism of Moss' **curriculum focus and Leadership** [A-44, ¶{45}; A-81 (for one specific example out of many); A-151, ¶174 and ¶198; A-152, ¶¶199-208].

B. Temporal (And Related Subject Matter) Nexi

5. Witness Carmelo Rivera testified to specific instances of recruitment and hiring discrimination against him by Limoncelli (one of the GASD Directors that was awarded tenure and eventually became Superintendent of Schools) [A-153, ¶¶1-6; A-38, ¶¶{14}-{16}]. Rivera further testified based on his personal experience in the community that Moss was known as a "friend of the minority community" and that she was "someone a member of the minority community could feel comfortable with and was trying to make some inroads for them" [A-154].

6. Witness Seavey testified (*inter alia*) to hostile noises, gestures, and body language on the part of the Board of Education in response to (i.e., in connection with) Moss' public presentation regarding discrimination correcting programs and activities and that Moss' presentations anticipated and advocated courses of action and correction similar to that which the SED Report would soon recommend. Cotugno attended all Board meetings at which Moss' presentations were made and was aware of these programs (e.g., pp. 5-6, ¶¶ 2-4 *supra*) [A-148, ¶106; A-149, ¶¶108-110; A-150, ¶163; A-151, ¶176].

7. Sometime during the week of **13 Jan. 1992-22 Jan. 1992** Arthur Cotugno received a pre-release copy of the SED Report which found discrimination (i.e., disparate treatment of minority students) in the GASD and which (defendants **admitted)** "angered" Cotugno [A-173; A-132].

8. 16 January (a month before the 14 February evaluation): Cotugno **refused to fully fund Moss' curriculum writing budget** which was the first time during her employ that this had occurred. [Cotugno would later claim that what his 14 Feb. Evaluation criticism *really* meant was that there were (allegedly) **curriculums that were not written**] [A-45, ¶{67}; A-92; A-72, ¶113; A-87; A-98; A-201, ¶¶155-159; A-200, ¶153; A-203, ¶168; A-117, ¶5 – A-118].

9. 17 January 1992 Cotugno sent Moss a job vacancy notice and application for employment in another district [A-46, ¶{68}; A-92; A-238 (Deposition page 328)].

10. The NYSED REPORT was released to the public on or about **29 January 1992** [A-46, ¶{69}; A-92].

11. Immediately on the heels of both the 29 January 1992 NYSED Report on discrimination in the GASD **and** Dr. Moss' enthusiastic support and utilization of the recommendations of that Report to accelerate and intensify her own on-going efforts to correct discrimination, Cotugno's behavior which had already started to increase in hostility towards Moss in the time period surrounding the pre-release [see 8, 9, and 10 *supra* e.g.] escalated into an overt, conspicuous, and protracted campaign to discourage her from using the SED Report recommendations to augment her own discrimination correcting efforts **and** to drive her from the district or failing that set her up to be fired [pp. 7-8. ¶¶12-25 *infra*].

12. Cotugno **admitted** that on 31 January 1992 he angrily told plaintiff with respect to programs recommended by the NYSED Report to correct discrimination that she sought to implement "We are not going to do any of this s---t" because he was angered about the SED Report [A-130; A-132].

13. Defendant's **admitted** that on **1 February 1992** Moss wrote Cotugno a letter of opposition to his treatment of her reminding him (*inter alia*) that she had been developing discrimination correcting programs long before the SED investigation and report [A-46, ¶{75}; A-92].

14. On 3 February 1992 Mr. Cotugno would not allow Dr. Moss (who chaired 2 committees) to attend the SED Report Response Chairs meeting, but instead ordered her out of the district over her objections [A-239 (Deposition page 353) – A-240)].

15. During the period of **29 Jan. through 10 Feb. 1992** the newspapers reported that Cotugno and the GASD Board of Ed. made "ripping criticisms" of the SED Report on Discrimination: Board member John Miller called it a "witch

hunt"; Mr. Cotugno (contrary to the Court's assertion that Cotugno made statements *in support of* the SED Report [A-19]) referred to it as "inaccurate" " self-professtations" with which he was "not pleased" [**A-171**]. [A-166 – A-175].

16. On **8 February 1992** NYSED Representative made a statement in the newspaper that, unlike other Districts, the Board of Education of GASD had hostility towards the SED investigation [A-47, ¶{77); A-82].

17. On **10 Feb. 1992** Mr. Cotugno rudely rebuffed Dr. Moss' invitation to go to a honorary supper with her, [**and** as the Court left out {A-18}] multicultural "Author in Residence" Rafe Martin, and GASD staff [A-162, ¶434].

18. On **11 February 1992** (3 days before his 14 Feb. Evaluation of Moss) Cotugno sent Moss yet another job vacancy notice and job application for employment in yet another district [A-47, ¶{80}; A-238 (Deposition page 328)].

19. On **14 February 1992** Cotugno wrote the **first** and **only negative** (in fact first and only less than "excellent and outstanding") job evaluation that Moss had received while employed at the GASD [A-141, ¶{67}; A-246 (Deposition page 241); A-110; A-47–A-48, ¶{80}; A-92–A-93]. The programs and activities Cotugno criticized in the 14 February Evaluation were those in which Moss was correcting discrimination (as detailed on pages 5-6, ¶¶ 1-4 *supra*).

20. On **28 February 1992** at an administrators' meeting in Moss' presence Cotugno **admitted** that he angrily referred to the SED Report Recommendations as "they're doing it to us with vaseline" and again admitted that it was his anger at the SED Report that caused him to speak in this fashion [A-48, ¶{82}; A-82].

21. On **3 March 1992** in a post-evaluation conference requested by Moss, Cotugno **admitted** that he gave explicit hints to Moss to get out of the District, stating to Moss (*inter alia*) "it would be advisable for you to see if there is something better for you...If there is another opportunity you should take advantage of it" [A-48, ¶{84}; A-82].

22. On **6 March 1992** Moss filed a Human Rights Complaint with the N.Y.S. Division of Human Rights [A-49, ¶{85}; A-82].

23. On **11 March 1992** Moss wrote Cotugno a response to the 14 February Evaluation which was also a second letter of opposition (which defendants describe as Moss' *resistance to constructive criticism*) [A-49, ¶88; A-82; A-191, ¶3].

24. On **19 March 1992** Cotugno resigned -- 5 working days after plaintiff filed a Human Rights Complaint -- and did not rescind his resignation until a few days before he recommended to the Board that Moss be terminated. This raises a genuine issue because a juror would be entitled to and would not be irrational to interpret this act as "consciousness of guilt" (i.e., liability) on Cotugno's part [A-49, ¶{90}; A-82; A-51, {107}; A-83].

25. 22 April 1992, the same day that the Board refused to renew Moss' contract giving the 14 February 1992 evaluation as their reason, Board Member Ferris (who voted for Moss' termination) stated publicly that he "had problems" with the GASD Response to the SED Report on discrimination, in particular "with many issues that involve minorities" [A-50, ¶{100}; A-93; A-177 (the article); A-50, ¶¶{98} and {99}; A-83; A-93].

Certainly **1-25** *supra* more than satisfy the Eleventh Circuit requirement of a demonstration that the protected activity and the retaliatory conduct are **"not completely unrelated"** [see p. 4 *supra*].

III. THE PRETEXT STAGE

A. FALSITY AND MENDACITY *PER SE*

> "Petitioner's reason for rejection thus suffices to meet the *prima facie* case, **but the inquiry must not end here**..." *McDonnell Douglas Corporation v. Green,* 411 U.S. 792, 804 (1973)

> ..."on retrial respondent must be given a **full and fair** opportunity to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a coverup for a racially discriminatory decision" {emphasis added}. Id at 805.

The Second Circuit **completely omitted the entire issue and analysis of falseness and mendacity *per se*** (as opposed to *"pretext"* in general) by replacing the specific issue of falseness *per se* with the inappropriate and equivocal use of the word "pretext" and in so doing assiduously ignored all (literally every single bit) of Dr. Moss' evidence addressed directly to the issue of falsity and mendacity *per se*, and did not (therefore) afford her a **full and fair** opportunity [or for that matter **any** opportunity] to demonstrate a genuine issue of fact for trial as to pretext by raising a genuine issue of material fact for trial as to falseness and mendacity *per se* with respect to the termination reasons as unambiguously required by law [A-5; A-20 – A-22].

Summary of Evidentiary Issues

[1]. As is detailed *infra* Mr. Cotugno **admitted** that those employees to whom he told NYSDHR he was referring in his 14 February 1992 Evaluation as " building administrators and central office colleagues" with whom Dr. Moss' "interpersonal relationships" allegedly caused "ineffective results" during the evaluation period of 1 July 1991-14 February 1992 [A-111] physically could not have been and **were not in fact** *what* the 14 Feb. 1992 evaluation was referring to. In light of petitioners having made a *prima facie* case this admission of falsity should have alone and without more {pursuant to *Reeves*} immediately ended the summary judgment motion in plaintiff's favor without further discussion.

[2]. *Reeves*' [530 U.S. at 145] held that the **absence of employee grievances** under circumstances where they

would reasonably be expected to exist creates a genuine issue of material fact for trial as to the credibility of defendants' termination reasons. Dr. Moss proffered documentary evidence that GASD employees had filed grievances and even lawsuits when they felt abused, unfairly treated, or otherwise wronged by other administrators. **Specifically**: A-216, ¶369; A-222; A-225–A-232; A-245-246. Dr. Moss proffered testimony and Defendants **admitted** that there had never been any grievances whatsoever brought against her [A-67, ¶[85]; A-86].

[3]. Petitioner Moss testified and respondent employ-- er GASD admitted that as of the date she was terminated there was no indication of interpersonal difficulties in her personnel file with any of the persons that the GASD named in their RDDIR to NYSDHR and later in their Federal interrogatory answers. Nor was there any record of any type of difficulties with any person whatsoever. In fact to the extreme contrary Moss' personnel file contained several commendations for accomplishments and working well with some of the very persons named by Cotugno [A-67, ¶[85]; A-137, ¶45; A-139, ¶51].

[4]. Former GASD Superintendent Brown gave sworn testimony that Moss was a warm, outgoing person, and an excellent listener who worked extremely well in group settings, and that in his direct experience with them the people named by Cotugno were problem employees and Moss was not responsible for the interpersonal difficulties of those employees [A-134-A-135, ¶¶21-30].

[5]. Principal Nellie Bush testified that Dr. Moss was not dictatorial, treated her (Bush) with respect, and conducted herself professionally [A-157 – A-158].

The employees named by the employer GASD as being those employees that Cotugno was referring to by the abstract categories set out on the 14 February 1992 Evaluation fall into two groups: **(1).** the five persons named [for the first time ever] by job title in the 31 March 1991 RDDIR to Human Rights [A-116] and **(2).** those employees mentioned

for the first time ever in Cotugno's year 2000 interrogatory answers [A-188 – A-191].

Re The Interpersonal Relationships Termination Reason

1. The Five Employees named on the March 1992 RDDIR [A-111; A-116 – A-117]

(a). John Quatrini
Director of Pupil Services
(incorrectly referred to in GASD's RDDIR [A-116] as Director of pupil "personnel").

Mr. Cotugno **admitted** that the 14 February 1992 Evaluation does not actually "pertain to an incident with Mr. Quatrini" [A-54, ¶[3]; A-84]. In his 31 March 1992 RDDIR, Cotugno had stated that the alleged interpersonal difficulties that he was referring to with Quatrini actually referred to Dr. Moss' attempts to have Black and Hispanic students properly placed [A-54, ¶ [4]; A-94]. Cotugno further **admitted** that as a result of Quatrini's own pervasive interpersonal difficulties and job performance deficiencies he [Cotugno] put "considerably less weight upon" the statements Quatrini [allegedly] made and that he [Cotugno] did not put "much credibility in" Quatrini's [alleged] statements [A-54, ¶¶ [3], [7], & [8]; A-94; A-218]. Former Superintendent Brown and Principal Nellie Bush also testified [A-158] that it was Mr. Quatrini, not Dr. Moss, who was the problem employee and Brown expressly stated in sworn testimony that based on his personal experience petitioner Moss was not responsible for any interpersonal difficulties that Quatrini had [A-135, ¶30].

Dr. Moss proffered evidence from her personnel file that she had in fact been commended for her work and effective outcomes with Quatrini [A-45, ¶45].

(b). Abdel Sharifi
(Referred to on the RDDIR [A-116] as the Science Chair)

Mr. Cotugno **admitted** that his assertion in his RDDIR and interrogatory answer indicating that Sharifi was an example of a specific person he was referring to in his 14 February evaluation of Moss was false in that the 14 February evaluation did not, as he had alleged in his RDDIR, refer to Sharifi [A-55,¶¶[11] - [15]; A-94].

Moss also produced Union documents showing that Sharifi himself engaged in discriminatory behavior against Dr. Schuyler, the only female Ph.D in his department, which at the very least raises an additional major triable credibility issue with respect to both Sharifi and Cotugno [A-219 - A-222].

(c). Paul Di Mascio

(Referred to on the RDDIR [A-116] as Voc. Ed. Chair)

Cotugno **admitted** that his assertion that Vocational Ed. Dept. Chairperson Paul DiMascio was one of the persons to whom he was referring by the abstract categories in his 14 February 1992 evaluation of Moss was false [A-56, ¶[18] & ¶[19]; A-95]. As with Sharifi, memos produced by Cotugno for the first time in his year 2000 interrogatory answers related to disciplinary actions taken in close consul-tation with Superintendent Brown and occurred before the 1 July 1991-14 February 1992 evaluation period in any event [A-56, ¶[20] & [21]; A-85]. Cotugno himself as personnel officer had problems with DiMascio and had written him a disciplinary memo indicating that he (DiMascio) did not know his job [A-56, ¶[22]; A-85]. See also Brown's testimony that DiMascio was a problem employee [A-135, ¶30]. DiMascio who was a union member never filed any grievance against Moss [A-57, ¶[24]; A-85].

(d). Jayne Steubing

(Referred to on RDDIR [A-116] as "ReadingCoordinator")

Cotugno **admitted** that his citing of Steubing on his RDDIR as a person to whom he was referring by the conclu-sory statements on the 14 February 1992 evaluation was

false; the incidents alleged to have occurred with respect to Steubing all are alleged to have taken place before the period expressly covered by Moss' 14 February 1992 evaluation [A-58, ¶[30]; A-95; A-223]. Said incidences were also well documented as being legitimate disciplinary actions taken in close communication with the Superintendent [A-58, ¶¶[29]-[32]; A-95]. Further-more in Steubing's own note to Moss regarding one of the disciplinary actions, Steubing thanks Moss and refers to Moss as a "breath of fresh air" [A-58, ¶[30]; A-95]. Brown testified on the basis of his own personal experience that Steubing was a problem employee prone to conflict with staff and Moss was not responsible for Steubing's interpersonal conflicts [A-135, ¶30].

(e). Margery Zucker

(Referred to on the RDDIR [A-116] as the Coordinator of Instructional Media)

Mr. Cotugno **admitted** that his RDDIR explanation of the 14 February 1992 evaluation was false in that Zucker had not been employed in the GASD for two years when he [Cotugno] wrote Dr. Moss' 14 February 1992 Evaluation [A-59, ¶[36]; A-85; A-241]. Cotugno **admits** that the unsworn pre-1991 documents proffered by GASD in support of the Zucker allegation were actually **"benign"** -- in other words, that the explanation was false [A-59, ¶[38]; A-95].

Zucker never lodged a complaint or grievance against Moss and Cotugno knew this [A-59, ¶[37]; A-95]. Moreover Zucker, as Cotugno was aware, was a problem employee who lost her job [A-60, ¶[39]; A-85; A-135, ¶30].

[There is also a non-specific interpersonal relations criticism on the 17 June termination notice letter [A-120].

2. Employees Mentioned For The First Time In 2001 [A-111; A-188 – A -191]

The very fact that the accusations regarding the following employees appear for the first time ever on Cotugno's 2001 interrogatory responses coupled with (*inter alia*) the fact that there is no mention of said accusations contained in Moss' personnel file raises a genuine issue of material fact as to whether they are mere afterthoughts.[1] Nevertheless, Moss proffered additional evidence of mendacity with respect to each employee as shown by examples given in the following sections.

(a). Richard Jankunas

Mr. Cotugno **admitted** that the alleged comments of Jankunas did not apply to Jankunas himself -- i.e., that there were no personal difficulties between Moss and Jankunas [A-60, ¶¶[41] & [42]; A-85]. Moreover Dr. Moss' personnel file contains a commendation by Brown for her work with Jankunas [A-139, ¶51] while containing absolutely no mention of any interpersonal difficulties [A-61, ¶¶[42] & [43]; A-85; A-205 – A-206].

(b). Joanne Spagnola

One of Cotugno's myriad of articulated termination reasons was that his secretary Ms. Spagnola allegedly stated that Dr. Moss was unorganized in applying for grants. Dr. Moss proffered evidence from her personnel file, from testimony from Brown, and from NYS Education Department that grant acquisition and maintenance was a major part of her job and that she had done this job in an "outstanding" fashion acquiring and writing grants that in fact established groundbreaking new programs in the district [A-134, ¶18; A-140, ¶58]. Cotugno **admitted** Dr. Moss' accomplishments in the area of grants and further **admitted**

1. It should be noted that the alleged statements proffered by GASD in their 2000 interrogatory responses [A-188 – A-191] were not made in any sworn employee affidavits or sworn employee depositions, they are merely GASD's alleged summaries of what employees allegedly stated.

that he did not consult the opinion of his secretary with respect to whether tenure should be granted to the male and non-interracially married directors Seward and Limoncelli and that he *should not* do so with regard to any Directorial tenure candidate [A-61, ¶¶[45] - [49]; A-96; A-241 - A-242].

(c). Jan Dyer

Mr. Cotugno **admitted** that as an English teacher and chairperson Mrs. Dyer did not fit the parameters set out by Cotugno in Moss' 14 February 1992 evaluation in any event -- in other words that his explanation was false [A-61, ¶[50]; A-85; A-62, ¶[51]; A-92]. *Reeves*, 530 U.S. at 144-146.

Dyer allegedly stated that Moss took credit for work done by others, but upon deposition Cotugno **admitted** that Dr. Moss gave credit to other staff including Dyer in specific and **admitted** that Dyer and Moss actually seemed to constitute a "mutual admiration society" [A-242 – A-243; A-62, ¶[53]; A-85; see also A-62, ¶ [52]; A-96].

(d). Gavin Murdoch

Mr. Cotugno **admitted** that Mr. Murdoch was a chairperson and does not fit the parameters of and does not support the allegations of Moss' 14 February 1992 evaluation, in any event [A-62, ¶[55]; A-85]. *Reeves*, 530 U.S. at 144-146.

Murdock allegedly made comments similar to Jan Dyer's alleged comment (*supra*) and as in the case of Dyer neither Murdoch nor Cotugno cited any specific incident, any grievance, or any indication in her personnel file that Moss engaged in any of the (allegedly) alleged conduct [A-63, ¶58; A-86].

(e). Ronald Limoncelli

Cotugno **admitted** that (then untenured Interim

Director of Personnel and present Superintendent of Schools) Limoncelli was not the Health Coordinator during the 1 July 1991-14 February 1992 evaluation period expressly covered by Moss' 14 February evaluation—in other words that his (Cotugno's) explanation was false [A-63, ¶[61]; A-86].

Limoncelli allegedly stated that Moss failed to help him with the K-5 Health curriculum. However, Cotugno **admitted** that Dr. Moss had arranged for Patricia Trzakos to coordinate the Health curriculum and that Moss also personally helped with the Health curriculum in her proper administrative capacity and that he was perfectly aware of these facts--i.e., that his explanation was false in any event. [A-243 (Deposition page 177) – A-244; A-63, ¶¶[62] & [63]; A-96].

Mr. Cotugno further admitted that it was Mr. Limoncelli, not Dr. Moss, that had a record of complaints, grievances (and a retaliation lawsuit by Pam Ruf) for inappropriately disciplining subordinates as well documented by the grievance reports [A-64, ¶[64], A-96] -- and yet Cotugno recommended that Limoncelli receive tenure and the GASD in fact granted him tenure.

Limoncelli reportly made "*inconsistent*" statements under oath in another GASD lawsuit and **respondents themselves asserted that Mr. Limoncelli's credibility is an issue for jury determination** [A-64, ¶[68]; A-97].

(f). John Giovanni

Upon deposition Cotugno **admitted** that Dr. Moss also helped Giovanni with the Health curriculum and that he (Cotugno) was perfectly aware of that fact -- in other words that his (Cotugno's) explanation was false [A-244 (Deposition page 195) - A-245; A-64, ¶[69]; A-65,¶[70]; A-97].

(g). Pam Ruf

Allegedly Mrs. Ruf stated that she was inappropriately disciplined and degraded by Dr. Moss in performing her

duties but neither she [Ruf] nor Cotugno specified any incident with respect to which this occurred. However, Cotugno **admitted** that Ms. Ruf was the type of employee who would file a grievance and even a lawsuit if she felt unfairly treated and that Ruf had in fact filed such grievances and lawsuits variously against Cotugno, Limoncelli, Quatrini, and others [A-245 (Deposition page 202) – A-246]. Cotugno further **admitted** that in fact Moss is actually one of the few GASD central office administrators that Ruf did not either grieve against or sue [A-65, ¶[74]; A-97].

Respondents also **admitted** that Moss gave Ruf a favorable evaluation and in fact afforded Ruf "greater levels of independence and responsibility" [A-66, ¶[75]; A-86].

(h). Charles Caruso

Cotugno **admitted** that former GASD Director of Finance Caruso was not even employed by the GASD during the 1 July 1991-14 February 1992 evaluation period and thus is outside Moss' 14 Februāry Evaluation's expressly stated parameters -- in other words that his (Cotugno's) explanation is false [A-66, ¶[77]; A-86]. *Reeves*, 530 U.S. at 144-146

Caruso allegedly stated that Moss overspent her district textbook budget prior to 1 July 1991 during Brown's superintendency. Moss proffered evidence that the allegation about her overspending the textbook budget is misleading and false because monies for textbooks could be taken out of any of the Office of Instruction budget lines so long as there was the appropriate amount of money in the Office budget lines in total [A-216 – A-217, ¶¶526-529].

Cotugno **admitted** that as an untenured Business Manager (having replaced Director of Finance Caruso on 30 June 1991) non-interracially married white male Roger Seward made major mistakes in the budgeting process which totaled to more than 400,000 dollars and became an embarrassing public issue reported in the newspapers -- and yet

Cotugno recommended him for and the GASD Board granted him tenure **[A-66,** ¶[81]; A-97**]**.

As to other various GASD explanations see also respondents admissions at A-67 – A-68; A-86; A-96-A-97; and A-217, ¶¶ 551-553.

3. Concentration on Curriculum
[A-111; A-117 – A-118; A-187 - A-188]

Cotugno **admitted** that under Moss' Directorship the district established a new science sequence; provided written courses of study for the K-6 grades (for the first time in the district); and established a new Alternative Education Program and Middle School Program, to name just a few—in other words that the 14 February 1992 evaluation allegation that Moss was not concentrating on curriculum was false. **[**A-69, ¶[99]**]**. Moss proffered testimony from Brown and documentary evidence that she was known by Cotugno and the Board (all new programs and major curriculum changes had to be presented to and approved by the Board) to be a "curriculum development expert who concentrated intensely on curriculum" **[**A-135-A-136, ¶¶31-40; A-73, ¶¶[121] – [125]; A-88**]**.

Cotugno **admitted** and Moss proffered documentary evidence and testimony from Brown that she had developed new "Five Year Plans" upon which **curriculum was planned out by staff until 1995 [**A-137, ¶44; A-145-A-146; A-70, ¶103, A-86**]**. *Reeves*, 530 U.S. at 144-146.

Moss also proffered as evidence a letter sent to her personnel file by a citizens group comprising at least five Board members commending her on her knowledge of the entire GASD curriculum which she displayed in a presentation to them **[**A-143 – A-144**]**.

4. Program Evaluation
[A-111; A-117 – A-118; A -187]

Respondents **admitted** that one of the first tasks that Dr. Moss undertook was to evaluate the entire GASD curriculum and that she continued to do so until her termination--in other words that the 14 February 1992 Evaluation allegation that evaluation in all areas of the curriculum had not been *evident* is false [A-69, ¶100; A-86; A-136, ¶42].

Moss proffered testimonial evidence from Brown and documentary evidence that her evaluation of the district was pervasive, excellent, and had results which were approved of, commended by, and used by the district [A-137 – A-138, ¶¶44-49]. *Reeves*, 530 U.S. at 144-146.

5. Middle School
[A-111; A-117 - A-118; A-188

Cotugno **admitted** that Dr. Moss provided a "clearly defined" Middle School plan, including "curriculum specific planning for instruction" -- in other words that the Middle School Plan allegation on the 14 February Evaluation was false [A -111 (recommendation 4); A-188, ¶1; A-70, ¶[102]; A-71, ¶¶[107]– [111]; A-87; A-140 –A-141, ¶¶ 58-66].

Moss further created genuine issues of fact as to the **subjective element** of the Middle School termination reason [i.e., *clarity* of the plan] by [*inter alia*] proffering evidence that **it was Cotugno himself** who actually introduced the plan to the Board of Education [A-71, ¶¶[106] – [107]; A-86 –A-87] and Brown's testimony that the "excellent" and "clearly defined" plan **was already completed** before Cotugno even became Superintendent [A-141, ¶¶ 65-66]. Moreover, the Board adopted the Plan and was still using it [at least] as of 1997 [Id.]. See *Reeves*, 530 U.S. at 144-146.

As to GASD's RDDIR explanation [A-118] that there were curriculums that should have been written as of 14 February, Respondents **admitted** that there was in fact no full curriculum cycle for Moss to have been evaluated on and it was Cotugno himself who cut Moss' curriculum writing budget which was dedicated to in fact complete said

curriculum writing cycle [A-197 – A-204; A-71, ¶¶[112]-[113]; A-87; A-98;].

6. Motivation and Recognition of Others
[A-111; A-118; A-190, ¶(8)]

Mr. Cotugno **admitted** that Moss did motivate people [A-72, ¶¶ [115] – [119]; A-87; A-99; A-134, ¶21].

7. Knowledge Of Curriculum
[See Concentration on Curriculum *supra]*

8. Gifted and Talented Program
[A-117; A-121; A-187]

Cotugno **admitted** that **he signed off** on two parts of a four year evaluation that Dr. Moss and the staff were conducting of the Gifted & Talented program and submitted it to the NYS Education Department -- i.e., that his claim that there was no evaluation and/or evaluation that was subjectively unsatisfactory to him is false [A-74, ¶[131]; A-88]. Cotugno **admitted** that he did not in fact request any information, recommendation, or review from Moss after his initial 25 July 1991 inquiry, i.e., that his year 2000 interrogatory response explanation is false [A-75, ¶[135]; A-99]. Cotugno **admitted** that Trzaskos rec-ommended the use of the course of study (which included the evaluation plan) developed by Moss and the staff, and yet Trzaskos was hired to replace Moss and granted tenured [A-75, ¶[136]; A-88]. *Reeves*, 530 U.S. at 144-146.

Brown testified as to the excellence and rigor of the evaluations and the program under Moss' administration [A-139-140, ¶¶55-57].

Moss also proffered a copy of actual written Goals and Objectives and Evaluation plans and Evaluations of the

Gifted & Talented Program [e.g., A-209, ¶1; A-212 - A-214]. [See also A-74, ¶[132]; A-99; A-209 – A-211; and A-215].

9. Alternative Education Program
[A-121; A-187]

Mr. Cotugno **admitted** that:

> "the Alternative Education Program was the most frequently and intensely evaluated program in the school district and Dr. Moss personally participated in evaluation meetings along with the psychologist, social worker, guidance counselors, teachers, and high school assistant principal [A-76, ¶[142]; A-88; A-89].

-- in other words that his termination reason was false.

Cotugno also **admitted** that the program was a highly successful program co-created by Dr. Moss. Dr. Moss proffered (*inter alia*) evaluations showing significant improvement in student performance. Moss also proffered evidence that Cotugno took credit for the program and that **it was named for him** after she was terminated [all as **admitted** by Cotugno: A-75 – A-76, ¶¶[137]–[145]; A-88 – A-89]. Brown also testified to the excellence of the program and Moss' administration of it [A-139 – A-138, ¶¶ 50-53]. [See also A-205 – A-206.] *Reeves*, 530 U.S. at 144-146.

10. Time Out Of District
[A-121; A-188]

Moss proffered every single one of her time request sheets as evidence demonstrating (and Cotugno **admitted**) that all time taken was charged to the Curriculum account # 2010.4001.04 and **approved and signed off on by Cotugno himself** -- creating a genuine issue of fact with respect to that termination reason. Cotugno **admitted** that his accusation

that Moss used 75 days was false [A-77, [146] – [151]; A-100; A-194 – A-195]. Moss also proffered testimony that Cotugno had upon several occasions actually ordered her to spend time out of the district [A-239 – A-240].

Conclusion As To Falsity Of Termination Reasons

There was no specific fact-based incident or occasion (i.e., names, dates, places, specific description of conduct or performance deficiency) of poor job performance or interpersonal conflict documented in Moss' personnel file when she was terminated on 17 June 1992, and Cotugno during his deposition could name none.

H. Alan Brown who had been Superintendent of GASD for 5 years from 1986-1991 testified on the basis of his personal knowledge and the specifics and documentation in his affidavit that:

> "70. On the basis of my experience working with Donna (as described in this Affidavit), I believe that the assertion that Donna Moss suddenly went from being the excellent and outstanding administrator that I knew to being so incompetent that she did not even deserve to be employed in the Greater Amsterdam School District is farfetched, prohibitively unlikely, and altogether unbelievable.
>
> 71. Moreover the assertion that Donna Moss was terminated from her position as Director of Instruction of the GASD because her job performance was allegedly incompetent or unsatisfactory is likewise and for the same reasons absolutely incredible." [A-142, ¶¶70-71].

B. THE PRE-*REEVES* FALSITY-*PLUS* STANDARD

The Second Circuit committed reversible error in upholding the District Court's misinterpretation of law and use (in the absence of extraordinary circumstances) of the falsity-

plus evidence criterion specifically abrogated by *Reeves* [A-5]. The District Court's interpretation of the criterion for withstanding a motion for summary judgment, *i.e.*,

> "An employer's reasons for termination cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false, and that the discrimination was the real reason[.]" [A-21]

as requiring *evidence* beyond that required by *Reeves* is precisely the interpretation that was the foundation of *Fisher v. Vassar College* and which was explicitly and verbatim abrogated along with the *Fisher* case itself. Specifically:

> "Compare...[*cases decided in other districts*] ... with *Fisher v. Vassar College*, 114 F.3d 1332 (CA2 1997) (*en banc*) (plaintiff must introduce sufficient evidence for jury to find both that employer's reason was false and that real reason was discrimination"). *Reeves* at U.S.140. ... "....abrogating *Fisher v. Vassar College.*" *Reeves*, 120 S.Ct. at 2097 (2000).

The phrase "*and that discrimination is the real reason*" refers to the additional required element of the **juries belief,** namely that the jury must find not only falsity but also on the bases of that falsity that discrimination has taken place —**and does not mean** (as the Second Circuit misinterpreted it to mean in petitioner Moss' case) that "additional evidence" must be proffered to sustain that belief. Thus the Second Circuit misinterpreted [A-5], failed to apply, and is in conflict with *Reeves'* **unanimous** "conflict resolution" that with respect to withstanding a motion for summary judgment, **absent extraordinary circumstances,** plaintiff's *prima facie* case and evidence of falsity (especially when raising a suspicion of mendacity) **is in fact "sufficient" in**

and of itself to permit (though not to compel) a jury to reasonably find that the employers reasons are in fact a *pretext* **and that *the real reason* is in fact discrimination – and no further proof is necessary**. *Reeves*, 530 U.S. at 149, 154.

Even before *Reeves*, the Court in *St. Mary's* adamantly and preemptively disallowed any contrary interpretations which would require "additional evidence"; thus:

> "4. Contrary to the dissent's confusion-producing analysis, post, at 509 U.S. at 535-536, there is nothing whatever inconsistent between this statement and our later statements that (1) the plaintiff must show "both that the reason was false, and that discrimination was the real reason," infra, at 515, and (2) "it is not enough ... to disbelieve the employer." *infra* at 519. Even though (as we say here) rejection of the defendant's proffered reasons is enough at law to sustain a finding of discrimination, there must be a finding of discrimination." *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 511(footnote 4 [7b]), (1993).

IV. MOSS' "ADDITIONAL EVIDENCE"

A. "ADDITIONAL EVIDENCE" RE. RACE CLAIM

1. The Board that terminated Moss did not [as the Second Circuit (by adoption) contended {A-20}] have the same composition as the Board that hired her -- in fact only three out of 8 remained at the time of Moss' termination [**Admitted**: A-77, ¶(1)-A-78; A-89; A-249 - A-250].

2. Every employment decision made about plaintiff in the relevant year was made in an atmosphere of racial tension and heated racial controversy [A-18] [**Admitted**: A-39 - A-40, ¶¶ {24}-{49},{53}-{54}, {69}-{88}, {98}-{101}, {108}, {111}; A-80- A-83; A-91 - A-93; A-106 - A-109; A-130; A-132; A-147 - A-152; A-153 - A-154; A-163 - A-179; A-248].

> "We note that Washington has also presented some direct evidence of race discrimination in that she has shown that an atmosphere of racial tension existed in the office during the period in which Buechner was negotiating to eliminate her position. This evidence strengthens, but is not necessary to her circumstantial case.... [T]he evidence must be viewed in the light most favorable to Washington. It thus lends support to her claim." Washington v. Garrett, 10 F.3d 1421, 1434 (9th Cir.1993).

> "Circumstantial evidence of a discriminatory atmosphere at a Plaintiff's place of employment is relevant to the question of motivation in considering a discrimination claim." Conway v. Electro Switch Corp., 825 F.2d 593, 597 (1st Cir. 1987).

Thus the Second Circuit is in conflict with the Ninth Circuit and the First Circuit on this issue [A-18].

3. Moss presented pictorial evidence that the persons most aggressive in their protest of racism in the GASD during that period [page 25, ¶2 *supra*] were racially "black [A-163 – A-165].

4. Tama Seavey testified that Cotugno made racially derogatory remarks to her about Hispanics [many of whom were racially *black*] [A-150, ¶128; A19].

5. A Board of Education member John Miller [A-16-A-17 and A-19] who voted to terminate Moss and ... iled the NYSED investigation a "witch hunt" [A-171, ¶5] ... peatedly stated at yearly intervals to Moss and others that he had "had a dream that [her] husband was black" prior to her being hired (which fact is also contrary to the Second Circuit's assertion (by adoption) that the Miller comments were a one time occurrence [**Admitted**, A-37, ¶{4}; A-38, ¶{7}; A-42, ¶{32}; A-91-A-92; A-180].

6. Other Board of Ed. members (Ferris and Persico) who voted to terminate Moss were reported by NYSED to have made "racist statements" to investigators [A-169].

7. Cotugno refused to allow African American William Powell to be the Opening Day speaker until finally relenting to Moss' persistence, evidence which the Court analyzed **piecemeal** and out of its circumstantial context [A-18]. [**Admitted:** A-39, ¶¶{22}-{23); A-80; A-91].

8. Cotugno refused to go to supper with multi-cultural author Rafe Martin [detailed at p. 8, ¶17 *supra*].

9. Moss' objective comparative qualifications were clearly and conspicuously superior to the persons outside her protected class who were hired to replace her and the other persons hired under a Director's title [A-233 – A -236].

10. Cotugno manipulated and lessened the qualifications and requirement for job postings such as to allow the hiring of less qualified non-interracially married and male candidates -- before the change Moss had been the only fully qualified candidate [A-104; A-123; A-124; A-235 – A-236].

11. The programs Cotugno criticized Moss about on her 14 February 1992 Evaluation were those involving her efforts to correct racial discrimination [detailed, page 5, §A *supra*].

12. Moss was terminated by a vote of only the white male members of the Board of Ed. -- the one Hispanic and the one female member of the Board both stayed away on the night of Moss' termination. Moreover, it was, thus, not as the Court contends "unanimous" [**Admitted**: A-78, ¶1; A-89].

13. Although well aware that she was carrying a workload conspicuously disparate to the non-interracially married workers, Cotugno would not allow Moss to have a free assistant -- whose salary would have been completely paid by a state grant [**Admitted**: A-44, ¶¶{50}-{51}; A-182].

14. Moss did not (as the Court contended) voluntarily carry her disparate workload as evidenced by a letter from her to Brown [A-181] and his reply. Brown's reply [A-82] also shows that a reasonable jury could find that **Moss had**

good reason to blame the Board rather than Brown, contrary to the Court's *theory* [A-20] that because Moss did not feel Brown discriminated against her she could not claim discrimination later against Cotugno.

15. Principal Nellie Bush testified upon deposition that male administrators habitually raised their voices in interactions such as meetings during working hours, which would (because of the disparate treatment issue) raise a genuine issue of material fact as to the pretextual nature of the "interpersonal relationships" termination reason even if (*arguendo*) said termination reason was factually accurate (which it is not) [A-155 - A-157; A-19].

16. Plaintiff proffered evidence that GASD evaluated and made a tenure decision about Moss by standards disparate from those used for the untenured non-interracially married male directors [*Supra*: Limoncelli, pg. 17, ¶¶3-4; pg. 18, ¶1; Seward, pg. 18, ¶5; and Trzaskos, pg. 21, §8, ¶1].

17. Of the group of four Directors who were untenured in 1992 [three of whom were white non-interracially married males and of one whom was a non-interracially married white female], petitioner Moss was the only one that lost her job and was denied tenure. In fact to this very day Dr. Moss is the only Director in the entire history of the GASD who was ever denied tenure and involuntarily terminated [A-52, ¶{111}; A-53, ¶¶{114}-{115}; A-83 – A-84].

Taken altogether (**as opposed to piecemeal**) this "additional evidence", **¶¶1-17** ***supra***, strengthens Moss' **already sufficient** claim of race discrimination.

B. "ADDITIONAL EVIDENCE" OF SEX CLAIM

1. Her qualifications were clearly and conspicuously superior to the male that replaced her and the other male Directors who received tenure [detailed pg. 27, ¶9 *supra*].

2. Cotugno manipulated the qualifications and requirements in the job vacancy postings such as to allow

males to qualify whereas under the original postings the two most qualified candidates were two females -- of which Moss was the only candidate who would have met all the original preferred criteria [e.g., under the original posting Ph.D. and central office experience were "preferred"] [A-104; A-123; A-124; A-235 – A-236].

3. The traditional Director of Instruction Office was occupied by the male Trzaskos while the female Dyer purportedly hired in the Secondary Director's position had a much smaller "cubby hole" office [A-78, ¶(2); A-90; A-234, ¶91 and ¶103]. These facts plus Dyer's inferior qualifications would allow a juror to reasonably find that Dyer was hired as a Director in name only and was actually hired as the male Trzaskos' assistant.

4. Cotugno **admitted** he made a lewd comment about the high school cheerleaders doing a "strip" in Moss' presence [A-49 – A-50, ¶{95}; A-83].

5. Cotugno chanted Moss' name [but as the Court left out {A-16 – A-17}] even after on his RDDIR he promised to stop [A-162, ¶¶ 665-666].

6. Cotugno prevailed upon Moss to prepare minutes of administrative meetings at which she was the only female, but never prevailed upon the males to do so. Contrary to the finding (by adoption) of the Second Circuit [A-16], Dr. Moss did in fact ***"explain"*** in several places on the record that such a task was a **female stereotype** which treated her as a secretary [A-237 – A-239].

7. Cotugno arranged with the male Directors to go to calling hours for a student who had committed suicide but left Moss to attend alone [A-162, ¶¶667-668].

8. Male Directors were not terminated and received tenure in spite of having job performance deficiencies and interpersonal conflicts **far more serious** than those that Moss was falsely accused of [see p. 28, §**16** *supra*].

9. Moss broke the glass ceiling for females in the GASD and was the first and only female full K-12 Director hired in the GASD until the year 2000 [evidence is proffered

as numerical rather than statistical]. Taken altogether (**as opposed to piecemeal**) this additional evidence [¶¶1-9] strengthens Moss' **already sufficient** claim of sex discrimination.

C. "ADDITIONAL EVIDENCE" OF RETALIATION.

See pg. 6, §5, pg. 17, ¶¶3-4, & pg. 28, §16 *supra*

V .FREE SPEECH PERSONAL CAPACITY CLAIM

Moss proffered evidence that in their personal capacities the named defendants (including Cotugno) retaliated against her for, and deprived her of a public forum to prevent her from, speaking about **issues of great concern, importance, and interest to the public** which is actionable under §1981 and §1983 **regardless of the subject of the speech** —i.e., independently of **and in addition to** Moss' Title VII retaliation claim **notwithstanding** the fact that both claims rely (in part) on the same evidence for proof [A-24; A-44, ¶{45}; A-149, ¶¶108-109; A-151 – A-152; A-78 (4); A-90; A-152, ¶¶206-208].

VI. NON- PRECEDENTIAL NATURE OF DECISION

The Second Circuit Order states that its decision "may not be cited as precedential authority" [A-2]. Petitioner Moss respectfully contends that a decision and/or category of decisions the substantive integrity of which is so inherently suspect that it may not even be cited as precedent (i.e., cannot even be cited as a binding example of the correct statement and application of the law) cannot provide and in fact has not provided due process in the disposition, to petitioner's detriment, of her important civil and property right claims.

Petitioner wants to be clear that she is not at all challenging the "*summary*" nature of the Order. Summary does not necessarily mean inferior; a Summary Order could be in all ways worthy of being cited as precedential authority.

May 12, 2004
DATE

Donna J. Moss, Ph.D.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURTHOUSE
40 FOLEY SQUARE / NEW YORK 10007

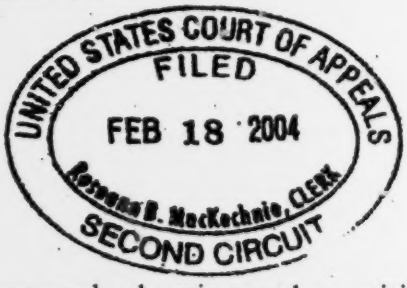
Moss

v.

ROSEANN B. MACKECHNIE
CLERK

Enlarged City
Docket No. 03-7342

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 18th day of Feb . two thousand four.



A petition for panel rehearing and a petition for rehearing having been filed herein by the appellant Donna Jeanne Moss.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon

For the Court, Roseann B. MacKechnie, Clerk

By: Arthur M. Heller

Arthur M Heller
Motions Staff Attorney

APPELLATE ORDER

NDNY/ALNY

95- cv- 1356
Kahn

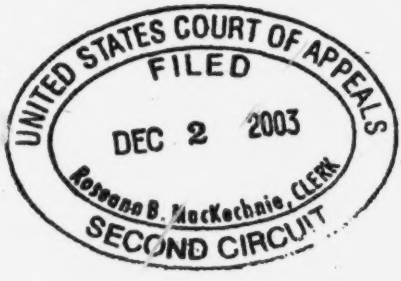
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 2nd day of Dec. , two thousand and three.

PRESENT: HON. DENNIS JACOBS,
HON. CHESTER J. STRAUB,
HON. BARRINGTON D. PARKER, JR., Circuit Judges.



APPELLATE ORDER

----------X

DONNA JEANNE MOSS,

Plaintiff-Appellant

-v.- 03-7342

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, THE BOARD OF EDUCATION OF THE GREATER AMSTERDAM SCHOOL DISTRICT, ARTHUR P. COTUGNO, CLAIRE LUDWIN, MICHAEL DECKER, DANIEL DE ROSSI, CHARLES FERRIS, MARK A. MILLER, FRANK PERSICO, EMANUEL ROSEN, AND RONALD LIMONCELLI,

Defendants-Appellees.

----------X

ON SUBMISSION:

FOR APPELLANT: DONNA JEANNE MOSS, Pro Se, Kingston, NY.

APPEARING FOR DEFENDANTS-APPELLEES: DAVID T. LUNTZ, Ryan & Smallacombe, PLLC, Albany, NY, Attorney for Enlarged City School District of the City of Amsterdam, Board of Education of GASD, Claire Ludwin, Michael Decker, Daniel De Rossi, Charles Ferris, Mark A. Miller, Frank Persico, Emanuel Rosen, and Ronald Limoncelli

APPELLATE ORDER

DEREK L. HAYDEN,
Horigan, Horigan,
Lombardo & Kelly,
Amsterdam, NY, for
Arthur Cotugno

Appeal from the United States District Court for the Northern District of New York (Kahn, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be **AFFIRMED**.

Plaintiff Donna Moss, pro se, challenges the grant of Summary judgment dismissing her claims of race and sex discrimination in violation of Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000(e); 42 U.S.C. §§ 1981, 1983, 1985 and 1988; the Fourteenth Amendment; N.Y. Exec. Law § 290; and the New York State constitution. We affirm for substantially the reasons stated by the United States District Court for the Northern District of New York (Kahn, J.) in its Memorandum and Order filed March 3, 2003.

Moss alleges that during her contractual tenure as Interim Director of Instruction, defendants consistently treated her differently from directors who were male and who were not married to a person of another race. She also claims that a poor performance evaluation that she received in February 1992 and the subsequent decision by the defendants not to extend her contract was in retaliation for her activities opposing discrimination in the Greater Amsterdam School District ("the GASD").

APPELLATE ORDER

As to the Title VII claim, the district court correctly found that Moss failed to meet her burden of proof under Mc-Donnell Douglas Corporation v. Green, 411 U.S. 792 (1973) that her discharge occurred in circumstances giving rise of an inference of discrimination. See also Fisher v. Vassar College, 114 F.3d 1332, 1335 (2d Cir. 1997) (en banc). The district court found that Moss had merely provided conclusory allegations and anecdotal evidence. Moreover, even if Moss could establish her prima facie case, the defendants advanced legitimate non-discriminatory reasons for non-remand, i.e., proof that Moss was not performing her job well and had personality conflicts with GASD staff and administrators.

Applying the McDonnell Douglas framework to her claim of retaliatory discharge, we conclude that Moss has failed to meet her burden of proof since she cannot show that the GASD decision not to renew her contract had any causal connection to her asserted efforts to improve race relations or her complaints of discrimination.

We have reviewed the other claims raised by Moss on Appeal and we find them to be without merit.

For the foregoing reasons the judgment of the district court is hereby AFFIRMED.

FOR THE COURT:
ROSEANN B. MACKECHNIE,
CLERK

By: Lucille Carr
Lucille Carr, Deputy Clerk

APPELLATE ORDER WAIVING ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square 40 Centre Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT
DONNA JEANNE MOSS vs. GASD et al #95-cv-1356
Caption use short title

Docket Number: 03-7342
Motion for: No Oral Arguments
Set Forth below precise, complete statement of relief sought:
An Order from the Court that there will be no oral argument for this appeal.

Moving Party	**Opposing Party**
Donna Jeanne Moss	GASD et al

* * *

ORDER

Before: Hon. Robert A. Katzmann, *Circuit Judge*

IT IS HEREBY ORDERED that the motion to transmit the entire record and to waive oral argument is GRANTED. The motion to file 101 page oversized brief is DENIED; brief shall be no more than 17,000 words.

5/16/03

UNITED STATES COURT OF APPEALS
FILED
MAY 16 2003
CLERK

FOR THE COURT:
Roseann B. MacKechnie, Clerk

by

MOSS' NOTICE OF APPEAL
District Docket No. 440

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Donna Jeanne Moss,
Appellant/Plaintiff,

vs.

Enlarged City School District of the City of Amsterdam, et al., Appellees/Defendants.

NOTICE OF APPEAL

Notice is hereby given that Donna Jeanne Moss, hereby appeal to the United States Court of Appeals for the. Second Circuit from the Order of District Court Judge Lawrence E. Kahn entered in this action on the 3rd day of March, 2003.

Dated: March 20, 2003

(Signature)

Ralph A. Cognetti, Esq.
Mevec & Cognetti
206 North Townsend Street
Syracuse, New York

315-476-6487
Fax, 315-476-6618

123203

DOCKETS RE DEFENDANTS MOTIONS FOR COSTS

3/3/03	438	JUDGMENT for Ronald Limoncelli, Emanuel Rosen, Frank Persico, Mark A. Miller, Charles Ferris, Daniel De Rossi, Michael Decker, Claire Ludwin, Arthur Cotugno, Amsterdam Bd. of Ed., Amsterdam Sch. Dist. against Donna Jeanne Moss Date Served: 3/4/03 (ldi) [Entry date 03/04/03]
3/3/03	---	Case closed (ldi) [Entry date 03/04/03]

* * *

5/14/03	444	MOTION by David T. Luntz, Esq., for Enlarged City School District of Amsterdam for Bill of Costs Motion returnable before Judge/Mag. Judge: Lawrence E. Kahn (jel)[Entry date 05/16/03] [Edit date 05/16/03]
5/27/03	445	MOTION by Derek Hayden, Esq., for Arthur Cotugno for Bill of Costs Motion returnable before Judge/Mag. Judge: Lawrence E. Kahn (jel)

DISTRICT AMENDED FINAL JUDGMENT
District Docket No. 449

UNITED STATES DISTRICT COURT*****
NORTHERN DISTRICT OF NEW YORK

AMENDED JUDGMENT IN A CIVIL CASE

DOCKET NO. 1:95-CV-1356 (LEK/RFT)

DONNA JEAN MOSS,

PLAINTIFF,

v.

AMSTERDAM SCHOOL DISTRICT; AMSTERDAM BOARD OF EDUCATION; ARTHUR COTUGNO; CLAIRE LUDWIN; BARBARA MILLER; MICHAEL DECKER; DANIEL DE ROSSI; CHARLES FERRIS; MARK MILLER; FRANK PERSICO; EMANUEL ROSEN; RONALD LIMONCELLI; NYS DIVISION of HUMAN RIGHTS; PAULA SAWYER; KEVIN LYNCH and JAMES BUSCHIN,

DEFENDANTS

_____ JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

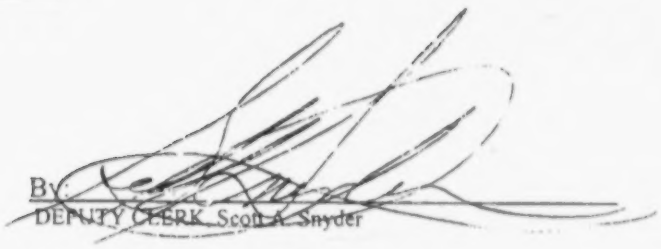
__XX__ DECISION by COURT. This action came to trial or hearing before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in the above entitled action, the case is DISMISSED and judgment is entered in favor of the defendants as against the plaintiff, in accordance with the MEMORANDUM-DECISION and ORDERS of the Honorable Lawrence E. Kahn, U. S. District Judge, dated August 19, 1999 and March 3, 2003.

DISTRICT AMENDED FINAL JUDGEMENT

DATE: July 17, 2003

LAWRENCE K. BAERMAN
CLERK OF THE COURT



By:
DEPUTY CLERK Scott A. Snyder

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
N.D.OF N.Y.
FILED
MAR 03 2003
LAWRENCE K. BAERMAN, CLERK
ALBANY

95-CV-1356
(LEK/RFT)

DONNA JEAN MOSS
Plaintiff,

v.

ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, et al.
Defendants

MEMORANDUM-DECISION AND ORDER

I. Background

On September 21, 1995 Plaintiff Donna J. Moss, Ph.D. ("Moss" or "Plaintiff") filed a law suit against the Greater Amsterdam School District ("GASD"), individual school board members and interim schools Superintendent Arthur Cotugno ("Defendant" or "Cotugno"), alleging racial and gender discrimination in employment. Specifically, Plaintiff claims that she was discriminated against because of her sex and because of her husband's race (the Plaintiff is Caucasian and her husband is African-American). Moss filed her claim under Title VI of the Civil Rights Act of

1964 42 U.S.C. §2000 (e), et. seq.; 42 U.S.C. §§ 1981, 1983, 1985 and 1988; the Fourteenth Amendment to the United States Constitution; N.Y. Exec. Law §§ 290, et. seq., of the New York State Human Rights Law ("HRL"); and the New York State Constitution. For some time, Moss was proceeding *pro se* but she is now represented by counsel.

In August 1989 the Plaintiff interviewed for the position of Interim Director of Instruction----------

for the GASD. On or about October 4, 1989, the GASD Board of Education voted in favor of Plaintiff's appointment and she accepted the position. When Plaintiff accepted the position and began her duties, the Superintendent of the GASD was H. Alan Brown ("Brown"). According to the Plaintiff, Brown never discriminated against her, she had a "great working relationship" with him, and he always gave her outstanding evaluations. See Exhibit E to Docket No. 418 at 47. Following Brown's resignation, Defendant Cotugno was named interim Superintendent on July 1, 1991. On February 24, 1992, Plain-tiff received her first job evaluation from Cotugno. The evaluation did not contain as much praise as the evaluation submitted by Brown and identified various aspects of the Defendant's performance which needed improvement. February 14, 1992 Cotugno Evaluation, attached as Exhibit H to Docket No. 417. In response to this two page evaluation, Plaintiff wrote a 96 page rebuttal in which she concluded that the evaluation was the result of "discrimination on the basis of sex and race." See Exhibit I to Docket No. 417. On March 6, 1992, Plaintiff filed a complaint with the New York State Division of Human Rights, alleging that Cotugno's evaluation of her was both -

discriminatory and retaliatory. On June 17, 1992, the Plaintiff received a letter from Cotugno informing her that he would recommend to the Board of Education that Plaintiff's contract not be extended. The Board of Education agreed with Cotugno's recommendation and voted unani-mously not to extend her contract. Plaintiff initiated this action on September 25, 1995.

Presently before the court are motions by the various defendants for summary judgment. Moss opposes the motions.[1]

1. The Court notes that Plaintiff's memorandum of law exceeded the allowable limit set by L.R. Civ. P. 7.1 (a) (1). Although it is within the Court's discretion to reject documents that do not comport with the local rules, the Court has elected to consider all of the arguments submitted by Plaintiff. The Court also notes Plaintiff's failure to comply with the rules pertaining to affidavits. According to L. R. Civ. P. 7.1 (2) an affidavit "must not contain legal arguments but must contain factual and procedural background as appropriate for the motion being made." Despite this unambiguous rule, Plaintiff submitted a "Supplemental Affidavit" of 13 pages which was in essence, a memorandum of law in that it consisted largely of legal arguments. See Docket No. 431.

II. Summary Judgment

Federal Rule of Civil Procedure 56 provides that summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In applying this standard, courts must "`resolve all ambiguities,

and credit all factual inferences that could rationally be drawn, in favor of the party opposing summary judgment." Brown v.Henderson, 257 F.3d 246, 251 (2d Cir. 2001) (quoting Cifra v. General Electric Co., 252 F.3d 205, 216 (2d Cir. 2001)).

Once the moving party meets its initial burden by demonstrating that no material fact exists for trial, the non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (citations omitted). The nonmovant "must come forth with evidence sufficient to allow a reasonable jury to find in her favor." Brown, 257 F.3d at 251 (citation omitted). Bald assertions or conjecture unsupported by evidence are insufficient to overcome a motion for summary judgment. Carey v. Crescenzi, 923 F.2d 18, 21 (2d Cir. 1991); Western World Ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 121 (2d Cir. 1990).

When deciding whether a summary judgment motion should be granted in an employment discrimination case, the Second Circuit has held that additional considerations must be taken into

page 4

account. See Gallo v. Prudential Residential Serv., 22 F.3d 1219, 1224 (2d Cir. 1994). Because writings directly supporting a claim of intentional discrimination are rarely, if ever, found among an employer's documents, a trial court must be particularly cautious about granting summary judgment when the employer's intent is at issue. See Gallo, 22 F.3d at 1224; see also Montana v. First Fed. Sav. & Loan Ass'n, 869 F.2d 100, 103 (2d Cir.1989). Affidavits and depos-itions must be scrutinized for circumstantial evidence which, if believed, would show discrimination. See Gallo, 22 F.3d at 1224. Nonetheless, when the defendant provides convincing evidence to explain its conduct and the plaintiff's contention consists of purely conclusory allegations of discrimination, the Court may conclude that no material issue

of fact exists and it may grant summary judgment in favor of the defendant. See Stern v. Trustees of Columbia Univ., 131 F.3d 305, 312-14 (2d Cir. 1997); Meloff v. New York Life Ins. Co., 51 F.3d 372, 375 (2d Cir.1995). "In other words, to defeat summary judgment, `the plaintiff's admissible evidence must show circumstances that would be sufficient to permit a rational finder of fact to infer that the defendant's employment decis-ion was more likely than not based in whole or in part on discrimination.'" Morris v. Amalgamated Lithographers of Am., Local One, 994 F. Supp. 161, 168 (S.D.N.Y.1998) (quoting Stern, 131 F.3d at 312). It must be stressed that the trial court's task at the summary judgment motion stage of the litigation is carefully limited to discerning whether there are any genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined at this point to issue-find-ing; it does not extend to issue- resolution. See Gallo, 22 F.3d at 1224.

III. Title VII Actions

On a motion for summary judgment in a Title VII employment discrimination case, courts apply the three-part burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411----------

U.S. 792, 802-04 (1973). See Weinstock v. Columbia Univer-sity, 224 F.3d 33, 42 (2d,Cir. 2000). The plaintiff in an em-ployment discrimination case bears the initial burden of dem-onstrating a *prima facie* case of unlawful discrimination by showing that : (1) she belongs to a protected class; (2) she was performing her duties satisfactorily; (3) she was discharged from its duties; and (4) the discharge occurred in circum-stances giving rise to an inference of discrimination. –See

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973); McLee v. Chrysler Corp., 109 F.3d 130, 135 (2d Cir. 1997). Once this burden is satisfied, the employer must point to evidence that there was a legitimate, nondiscriminatory reason for the employer's action. See id. If Defendant proffers such a reason the presumption of discrimination is rebutted and it "simply drops out of the picture," and the burden shifts back to the plaintiff to prove that this reason is merely a pretext for impermissible discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 511 (1993).

IV. Plaintiff's Prima Facie Case

The initial burden is on the Plaintiff to demonstrate her *prima facie* case of unlawful discrimination. The Court will assume that Moss has satisfied the first three prongs of the McDonnell Douglas test, (i.e. that (i) she belongs to a protected class; (ii) she was performing her duties satisfactorily and; (iii) she was discharged from her duties). It is with the fourth prong of the test that her discharge occurred in circumstances giving rise to an inference of discrimination, where the Plaintiff's argument falls far short of demonstrating a *prima facie* employment discrimination case. As evidence of circumstances giving rise to an inference of discrimination, Plaintiff offers the following evidence: (a) she was required to take notes at school board meetings when no "white, non-interracially married administrators were required to take notes." (Plaintiff's Memorandum of Law, Docket No. 433, at 21); (b) on September 29, 1989 GASD Board member----------

John Miller (now deceased), stated that he had a dream her husband was black. See Docket No. 432, ¶ 2C; (c) when leaving the office at night "Defendant Cotugno often repeated

Plaintiff's name in a mocking sing-song voice as a harassing tactic." (Plaintiff's Memorandum of Law, Docket No. 433, at 21). Although entirely unpersuasive in showing circumstances giving rise to an inference of discrimination, the examples above are three of the most compelling the Plaintiff offered[2].

Moss fails to demonstrate how being asked or told to take notes of board meetings is related to or motivated by her gender or her marriage to an African-American. Likewise, the fact that a board member said he had a dream about her husband being black does not give rise to an inference of discrimination. Finally, Plaintiff fails to demonstrate how Cotugno's "sing-song" recitation of her name gives rise to an inference of unlawful discrimination. Grant v. Cornell University, 87 F. Supp. 2d 153 (N.D.N.Y. 2000) (courts are not permitted to 'go beyond the language of the statement at issue to find inferences of bias where none exist') quoting Jalal v. Columbia University, 4 F. Supp. 2d 224 (S.D.N.Y. 1998).

*Plaintiff's affidavits, memoranda and depositions are replete with bald, conclusory allegations and evidence which at best could be termed anecdotal. The following quotations are a representative, but not exhaustive, representation of the overall tenor and substance of the Plaintiff's complaint:

> "Knowing their [defendants] true feelings about the NYSED (New York State Education Department) report it is farcical to learn that Defendant Cotugno on or about April of 1992 presents the Districts plan to implement the recommendations of the SED report and states that the District could be proud of this report and that it is a 'blueprint for the future.' Very interesting indeed since the plan was based on almost entirely on

[2]Although there is a dispute as to whether or not the Plaintiff was required to take notes , the Court construes this, and all of the Plaintiffs allegations, in the light most favorable to her.

programs and activities that had been administratively initiated and/or developed by Dr. Moss and had been going on since the 1990-1991 school year." Plaintiff's Memorandum of Law at 28. **page 7**

> "Evidence of the accuracy of Dr. Moss' complaints is shown by the results and findings of the NYSED [New York State Department of Education] investigation issued in January 26, 1992 which mirrored all of Dr. Moss' concerns. Of course, any success had by Dr. Moss in ridding the, school district of discriminatory practices was attributed to Defendant Cotugno!" Id at 27.

> "Defendant Cotugno initially rejected a plan by Dr. Moss to invite educator William Powell, an African-American to be the opening speaker at their assembly. Only as the result of her fine interpersonal skills with other committee members did Dr. Moss receive permission to have Dr. Powell speak. On another occasion Defendant Cotugno refused to have dinner at a time convenient to Defendant Cotugno." Id at 22.

The speculative, conclusory and unsubstantiated, claims contained in the Plaintiff's filings do not constitute a *prima facie* case of discrimination. In sum, Plaintiff argues that there was a "racially hostile" environment throughout the GASD and without offering any convincing evidence to substantiate her contention, she argues that this hostile environment was "duplicated in the actions taken against Dr. Moss." (Plaintiff's Memorandum of Law, at 22). An inference of discrimination can be demonstrated by "actions or remarks made by decisionmakers that could be viewed as reflecting a discriminatory animus." Chertkova .v. Connecticut Gen. Life Ins. Co., 92 F.3d 81, 91 (2d Cir. 1996). Plaintiff has not offered evidence of any action or remark that could be viewed as reflecting a discriminatory animus. A plaintiff may also raise an inference of discrimination by

showing that the employer subjected him or her to disparate treatment. See International Bhd. of Teamsters v. United States, 431 U.S. 324, 335 (1977); Norville v. Staten Island Univ. Hosp., 196 F.3d 89, 95 (2d Cir. 1999). Plaintiff in the present case has failed to offer any evidence that she was treated less favorably than a similarly situated employee who was outside her protected group.

Despite Cotugno's statements in support of the NYSED report on the racial situation at GASD, Plaintiff claims to know Cotugno's "true feelings." Plaintiff's Memorandum of Law at 28.

Speculation as to what another person was thinking does not constitute evidence of discriminatory intent. Goenaga v. March of Dimes, 51 F. 3d 14 (2d Cir. 1995).

The Plaintiff's effort to demonstrate an inference of discrimination is further hampered by her own deposition. On page 54 of her examination before trial (EBT), Plaintiff states that she could not recall any GASD board member, other than the aforementioned John Miller, ever making reference to the fact that she was married to an African-American. Plaintiff also states that no GASD board members ever made derogatory comments about African-Americans in her presence. Exhibit E attached to Docket No. 418. Moreover, Plaintiff acknowledges that Defendant Cotugno (i) never made any remarks to her regarding her marriage to an African-American (ii) never made any remarks to her that were derogatory toward African-Americans and (iii) never heard any other third party tell her that Cotugno ever made any derogatory remarks toward African-Americans. Id. at 43. A court must not "impute discrimination....on the basis of circumstantial evidence that has no logical tendency to show that discrimination was present." Pollis v. New School, 132 F. 3d 115 (2d Cir. 1997).

Further indicating the lack of any discriminatory animus is the fact the same GASD Board who voted to hire the Plaintiff are the same members who voted not to renew her contract. As the Second Circuit has stated, "When the person who made the decision to fire was the same person who made the decision to hire, it is difficult to impute to her an invidious motivation that would be inconsistent with the decision to hire." Grady v. Affiliated Central, Inc. 130 F. 3d 553 (2d Cir. 1997).

Plaintiff's assumption of a "90 hours per week" workload is also not evidence of unlawful discrimination (Plaintiff's Amended Complaint ¶ 30). Plaintiff undercuts her own contention that----------

her workload was the result of discrimination when she admits in her deposition that she knew before taking the position that the school district had decided to eliminate the positions of assistant director of secondary instruction and assistant direct-or of elementary instruction. Deposition of Plaintiff, at 74, attached to Docket No. 418 as Exhibit E. In addition, Mr. Brown was the Superintendent of Schools when the Plaintiff accepted the job. This is significant because in her deposition, the Plaintiff stated that Mr. Brown was "great to work with" and she did not feel that Mr. Brown discriminated against her in any way. Id. at 47. For this reason, it is also telling that Moss assumed the duties of coordinator of instructional materials in 1990 while Mr. Brown was superintendent. The Plaintiff cannot now credibly claim that her assumption of additional duties is proof of discrimination while also stating that she and Mr. Brown had a "great relationship" and that he did not discriminate against her.

Plaintiff's claim would fail even if she did meet her burden of establishing a *prima facie* case of unlawful

discrimination, because the Defendants have met their burden under McDonnell Douglas by providing a legitimate, non-discriminatory reason for deciding not to renew the Plaintiff's contract. Defendants cite the following reasons for choosing not to renew Plaintiff's contract (i) her sub-standard knowledge of curriculum; (ii) her excessive expenditures and leave for conference attendance; (iii) her personality conflicts with colleagues and staff, including the Superintendent of GASD (Cotugno). (Defendant's Memorandum of Law, Docket No. 430 at 16). As evidence of these shortcomings, Defend-ants point to Cotugno's performance evaluation of Plaintiff where he outlined various areas in need of improvement. Exhibit H attached to Docket No. 417. Defendants' also offer evidence indicating that a number of school personnel had conflicts with the Plaintiff. (See Exhibit C attached to Docket No. 427).

page 10

The burden, therefore, shifts back to Plaintiff to establish that the reasons proffered by Defendant are a pretext for unlawful discrimination. "The plaintiff must produce not simply some evidence, but sufficient evidence to support a rational finding that the legitimate, non-discriminatory reasons proffered by the [defendant] were false, and that more likely than not [discrimination] was the real reason for the [employment action]." Weinstock, 224 F.3d at 42 (2d Cir. 2000). "An employer's reason for termination cannot be proved to be a pretext for discrimination `unless it is shown both that the reason was false, and that discrimination was the real reason.'" Kerzer v. Kingly Mfg., 156 F.3d 396, 401 (2d Cir. 1998) (quoting Hicks, 509 U.S. at 506 (1993)). "In the summary judgment context, this means 'that the plaintiff must establish a genuine issue of material fact either through direct, statistical or circumstantial evidence as to whether the employer's

reason for [taking an adverse employment action against] him is false *and* as to whether it is more likely that a discriminatory reason motivated the employer to make the adverse employment decision.'" Kerzer, 156 F.3d at 401 (quoting Gallo v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219, 1225 (2d Cir. 1994)). Summary judgment is appropriate when the plaintiff cannot offer evidence that the employers justification (for the employment action) was a pretext. Smith v. American Exp. Co., 853 F.2d 151 (2d Cir. 1988). As discussed above in detail, the Plaintiff does not offer sufficient evidence to show that she was the victim of unlawful discrimination or that the reasons for her discharge were pretextual.

IV. Plaintiff's Retaliation Claim

Title VII makes it "an unlawful practice for an employer to discriminate against any of his employees ... because he has opposed any practice made an unlawful employment practice by this----------

subchapter, or because he has made a charge ... or participated in any manner in an investigation, proceeding, or hearing under this subchapter.'" 42 U.S.C. §§ 2000e-3(a). Plaintiff claims that she was discharged in retaliation for her "efforts to correct the hostile racial environment which existed in the GASD." Id. at 24. She also contends that her contract was not renewed because she filed complaints with the New York State Division of Human Rights and the Equal Employment Opportunity Commission.

Claims of retaliation are analyzed under the same burden-shifting framework laid out in McDonnell Douglas Corp., 411 U.S. (1973). The plaintiff must first establish a *prima facie* case of retaliation by proving that (i) she was

engaged in protected activity; (ii) the defendant was aware of this activity; (iii) the defendant took adverse action against the plaintiff; and (iv) a causal connection exists between the protected activity and the adverse action, (i.e. that a retaliatory motive played a part in the adverse employment action). Reg'l Econ. Cmty. Action Program. Inc. v. City of Middletown, 294 F.3d 35, 54 (2d Cir. 2O02); Gordon v. New York City Bd. of Educ., 232 F.3d 111, 113 (2d. Cir. 2000).

If the plaintiff meets the initial burden, which the Court will assume, *arguendo*, she has, the burden shifts to the defendant to provide a legitimate nonretaliatory reason for its decisions. See Richardson v. New York State Dep't of Corr. Serv., 180 F.3d 426, 443 (2d Cir. 1999); Quinn v. Green Tree Credit Corp., 159 F.3d 759, 768-69 (2d Cir. 1998). If the defendant meets this burden, then the McDonnell Douglas framework disappears and the sole remaining issue is whether the plaintiff has produced sufficient evidence that discriminatory or retaliatory animus was a motivating factor in the challenged decisions. Reg'l Econ., 294 F.3d at 49, 54. In determining whether the plaintiff has met this burden, the Court is to use a "case by case" approach that evaluates "the--

---

strength of the plaintiffs prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports [or undermines] the employer's case." James v. New York Racing Assoc., 233 F.3d 149, 156 (2d Cir. 2000)(quoting Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133, 142 (2000).

As discussed in detail in Section III of this decision, the Defendants have submitted a legitimate, non-discriminatory reason for not renewing the Plaintiff's employment and the Plaintiff has failed to show that the reasons proffered by the Defendants were a pretext for unlawful discrimination.

Similarly, the Plaintiff has failed to offer any evidence that the GASD's decision not to renew her contract was related in any way to her (i) efforts to improve race relations; (ii) her filing of a complaint with the New York State Division of Human Rights or; (iii) her filing of a complaint with the EEOC. The Plaintiff was not able to sustain a claim based on race or gender discrimination because the evidence she submitted consisted of unsubstantiated allegations and conjecture. Her claim of retaliatory discharge fails for the same reason.

V. Plaintiff's Claim Against Defendant Cotugno

Plaintiff has named Cotugno as a defendant in his individual capacity and Cotugno has moved to dismiss the claim. Under Title VII individual supervisors are not subject to liability. See Wrighten v. Glowski, 232 F.3d 119, 120 (2d Cir. 2000) (per curiam); Tomka v. Seiler Corp., 66 F. 3d 1295, 1317 (2d Cir. 1995). Accordingly, Cotugno's motion for summary judgment is granted and Plaintiff's claims against him in his individual capacity are dismissed.

VI. Plaintiff's State Claims

In adjudicating discrimination claims brought under New York human rights law, the state courts follow federal law. Therefore, the same legal standards are applied to both a federal

discrimination claim and a claim brought under state law. See Cruz v. Coach Stores, Inc., 202 F.3d 560, 565 (2d Cir. 2000). Moss has failed to meet her burden under federal law and by doing so, she has necessarily failed to meet her burden under state law. Accordingly, all defendants in this action are granted summary judgment as to all state claims and all such claims against them are dismissed.

CONCLUSION

The Court has resolved all ambiguities and credited all factual inferences in favor of the Plaintiff. The Plaintiff has failed to offer sufficient evidence to allow a reasonable jury to conclude that she was in any way the victim of unlawful discrimination based on her gender, her marriage to an African-American or based on retaliatory motives.

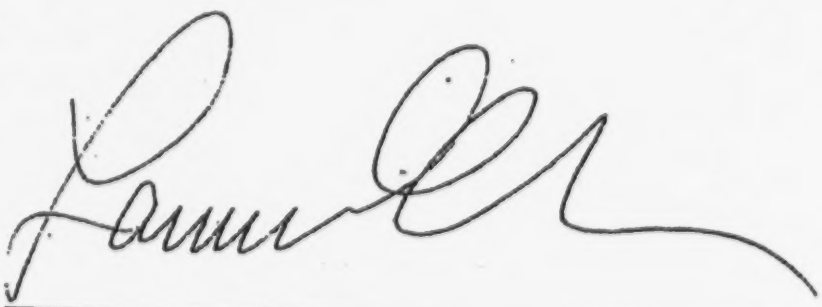
Accordingly, it is ORDERED that Defendant Cotugno's motion for summary judgment (Docket No. 416) is GRANTED; and it is further

ORDERED that all other defendants in, this action are GRANTED summary judgment (Docket No. 426); and it is further

ORDERED that Plaintiff's complaint is DISMISSED in its entirety; and it is further

ORDERED. that the Clerk of the Court shall serve copies of this order by regular mail upon the parties to this action.

IT IS SO ORDERED
Dated: February 26 2003
Albany, New York



HON. LAWRENCE E. KAHN
UNITED STATES DISTRICT COURT JUDGE

MANDATE ISSUED RE PETITION FOR MANDAMUS

95-CV-1356

Kahn, J.

United States Court of Appeals

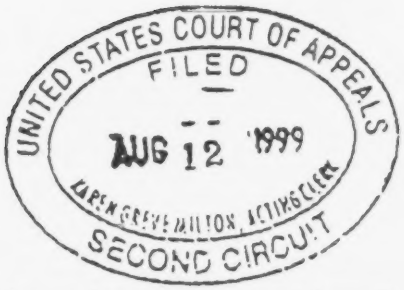
FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City-of NewYork, on the twelfth day of August one thousand nine hundred and ninety-nine,

Present: Hon. Guido Calabresi
Hon. Jose A. Cabranes,
Hon. Sonia Sotomayor,
Circuit Judges.

99-3040



In re: Donna Jeanne Moss.Petitioner.

A petition having been brought herein by petitioner *pro se* for a writ of mandamus, upon consideration thereof, it is ordered that the petition is denied for failure to demonstrate extraordinary circumstances. See Kerr v. United States District Court, 426 U.S. 394, 403 (1976). Because we have no reason to doubt that the district court will decide the petitioner's case with reasonable promptness, the petition for a writ of mandamus is denied without prejudice to refiling if the pending motion has not been decided within 90 days of the entry of this order.

MANDATE ISSUED RE PETITION FOR MANDAMUS

FOR THE COURT:
Karen Greve Milton, Acting Clerk

By Lucille Carr

Karen Greve Milton

ACTING CLERK

AUG 12 1999 ISSUED AS MANDATE:
8/12/99

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AMENDED COMPLAINT

DONNAJEANNE MOSS,

Plaintiff,

JURY TRIAL DEMANDED

-against- 95-CV-1356

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, THE BOARD OF EDUCATION OF THE GREATER AMSTERDAM SCHOOL DISTRICT, ARTHUR P. COTUGNO, CLAIRE LUDWIN, BARBARA G. MILLER, AS VOLUNTARY ADMINISTRATOR OF THE ESTATE OF OTTO MILLER, DECEASED, MICHAEL DECKER, DANIEL DE ROSSI, CHARLES FERRIS, MARK A. MILLER, AS VOLUNTARY ADMINISTRATOR OF THE ESTATE OF JOHN MILLER DECEASED, FRANK PERSICO, EMANUEL ROSEN, RONALD LIMONCELLI, NEW YORK STATE DIVISION OF HUMAN RIGHTS, PAULA SAWYER, KEVIN LYNCH, and JAMES BUSCHIN, in both their official and personal capacities,

Defendants

PRELIMINARY STATEMENT

1. The following actions allege retaliation and racial and sexual discrimination in employment and arise under the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000(e), et seq. (hereinafter referred to as "Title VII"), 42 U.S.C. Subsection 1981, 1983, 1985 and 1988 (hereinafter referred to as "Sect. 1981" , "Sect. 1983" , "Sect. 1985", and "Sect. 1988", respectively), the Fourteenth Amendment to the Constitution of the United States of America (hereinafter referred to as the "Fourteenth Amendment"), Sect. 290, et seq. of the New York State Executive Law (hereinafter referred to as the "Human Rights Law") and Article 1, Sect. 11 of the Constitution of the State of New York (hereinafter the "New York State Constitution").

* * *

LAWS , STATUTES, AND RULES

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C.A. § 1981

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C.A. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

UNLAWFUL EMPLOYMENT PRACTICES
SEC. 2000e-2. *[Section 703]*

(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

OTHER UNLAWFUL EMPLOYMENT PRACTICES
SEC. 2000e-3. *[Section 704]*

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor management committee controlling apprenticeship or other training or retraining, including on the job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice, made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Art. 1.5 HUMAN RIGHTS LAW § 296

Unlawful discriminatory practices

1. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sex, or disability, or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in-terms, conditions or privileges of employment.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixing for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

LOCAL RULES OF PRACTICE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

7.1(a-)Summary Judgment Motions.

Any motion for summary judgment shall contain a Statement of Material Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, each material fact the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific citation to the record where the fact is established. The record for purposes of the Statement of Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits. Failure of the moving party to submit an accurate and complete Statement of Material Facts shall result in a denial of the motion.

The opposing party shall file a response to the Statement of Material Facts. The non-movant's response shall mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. The non-movant's response may also set forth any additional material facts that the non-movant contends are in dispute. Any facts set forth in the Statement of Material Facts shall be deemed admitted unless specifically controverted by the opposing Party.

SUBMISSIONS PURSUANT TO DOCKET # 412

3/28/02 412 LETTER REQUEST of Ralph A. Cognetti 3/25/02 and ORDER, Plaintiff's request to use and reference previously served exhibits in response to defts' summary judgment motions is granted(signed by Magistrate Judge Randolph F. Treece) (ldi) [Entry date 03/29/02]

4/20/01 346 AFFIDAVIT E-1 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 347 AFFIDAVIT E-2 by H. Alan Brown for Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 348 AFFIDAVIT E-3 by Tama Seavey for Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 349 AFFIDAVIT E-4 by Carmelo Rivera for Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 350 AFFIDAVIT E-5 w/attached deposition of Nellie Bush by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 351 AFFIDAVIT E-6 w/attached affidavit of Mario Cometti by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

SUBMISSIONS PURSUANT TO DOCKET # 412

4/20/01 352 EXHIBIT E-7 filed by pltf. in support of 343-1] motion for summary judgment (ldi) [Entry date 04/23/01]

4/20/01 353 AFFIDAVIT E-8 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 354 AFFIDAVIT E-9 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry 4/23/01]

4/20/01 355 AFFIDAVIT E-10 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 356 AFFIDAVIT E-11 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 357 AFFIDAVIT E-12 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 358 AFFIDAVIT E-13 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

4/20/01 359 AFFIDAVIT E-14 by Donna Jeanne Moss Re: in support of [343-1] motion for Summary Judgment (ldi) [Entry date 04/23/01]

L.R. 7.1 ADMITTED STATEMENTS
(District Docket # 432)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS, Civil Action No.

Plaintiff, 95-CV1356 (LEK)(RT)

against - 6 APRIL 2002

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, THE BOARD OF EDUCATION OF THE GREATER AMSTERDAM SCHOOL DISTRICT, ARTHUR P. COTUGNO, CLAIRE LUDWIN, MICHAEL DECKER, DANIEL DE ROSSI, CHARLES FERRIS, MARK A. MILLER, as Voluntary Administrator of the Estate of JOHN MILLER, Deceased, FRANK PERSICO, EMANUEL ROSEN, RONALD LIMONCELLI, NEW YORK STATE DIVISION OF HUMAN RIGHTS, PAULA SAWYER, KEVIN LYNCH, and JAMES BUESCHEN, in both their Official and Personal Capacities,

Defendants

PLAINTIFF MOSS
L.R. 7.1(a)(3) STATEMENT

OF THE MATERIAL FACTS AS TO WHICH THERE EXIST A GENUINE ISSUE IN OPPOSITION TO DEFENDANT'S Fed.R.Civ.P. 56 MOTION FOR SUMMARY JUDGMENT

[cited as Moss' 7.1(a)(3) Statement]

1. The excerpts from the L.R. 7.1 documents through which Respondants admitted these statements are on **A-79 – A-84** infra for GASD and pages **A-91 – A-94** infra for Mr. Cotugno.
2. See also Local Rule 7.1(a) at A-33.

L.R. 7.1 ADMITTED STATEMENTS

{1}. On 13 November 1989 Board member John Miller told Dr. Moss that it was he who had "had the dream" that her husband was Black. [E-7: Moss Interrogatory Answers 8 & 9, 12 (¶ 4)]. [E-1: DOCUMENTS: Exhibit "2L", p. 2, "Particular 4"]. [E-1: DOCUMENTS: Exhibit "H", motion 7.e.]. [E-15: Moss Deposition, pp. 27-42 (line 9); p. 33 (lines 13-34, line 10); p. 36 (lines 11-18); & p. 287 (lines 10-19)].

{2}. Dr. Moss received a 5 February 1990 Evaluation which commended her [inter alia] for "outstanding commitment" and "excellent" leadership in the area of making curriculum improvements. [E-1: DOCUMENTS: Exhibit "G", p. 1, ¶ 2 and p. 2, ¶ 1]. [E-13: Moss Affidavit re Interpersonal Relationships, Exhibits "12E" & "12F"]. [E-15: Moss Deposition: p. 285 (lines 16-17); p. 286 (lines 1-11)].

{3}. On 21 February 1990 Plaintiff was hired by GASD as permanent Director of Instruction 8 months early due to her excellent performance. GASD did not seek further candidates or hold job interviews before employing Moss as permanent Director on a probationary tenure track, making this second hiring of her also in the nature of an early promotion and a vote of confidence. [E-2: Brown Affidavit, ¶¶ 4-10]. [E-1: DOCUMENTS: Exhibits "F", "H", "I", & "J"]. [E-15: Moss Deposition: p. 286 (lines 1-11)].

{4}. In 1990 GASD Board member John Miller voted against hiring Plaintiff as permanent Director. [E-1: DOCUMENTS: Exhibit "H"]. [E-15: Moss Deposition: p. 37 (lines 5-23), p. 38 (line 22), p. 39 (lines 1-10), p. 287 (lines 14-17)].

{5}. When hired as permanent Director in 1990 Moss was put on a "tenure track" with a tenure decision date of 16 October 1992. [E-2: Brown Affidavit, ¶ 10].

L.R. 7.1 ADMITTED STATEMENTS

{6}. On 2 August 1990 Plaintiff received another excellent and outstanding Evaluation from Superintendent Alan Brown. [E-1: DOCUMENTS: Exhibit "J"]. E-15: Moss Deposition: p. 292 (lines 17-23), p. 293 (lines 1-3), p. 293 (lines 6-10), p. 293 (lines 13-15).]

{7}. On 2 August 1990 Board member John Miller reminded Dr. Moss that it was he who had "had a dream that [her] husband was Black". [E-7: Moss Interrogatory Answer 9, ¶¶ 4-6; Interrogatory 12, ¶ 4]. [E-15: Moss Deposition: p. 28 (lines 8-20)].

{14}. Cotugno (before becoming GASD Interim Superintendent) was Director of Personnel during an 8-year period when the GASD had the employment figures of 1 minority teacher, 1 minority teaching assistant, and 2 non-professional Hispanics out of a work force of 540. [E-7: Moss Interrogatory Answer 12, ¶¶ 20-33-35]. [E-15: Moss Deposition: p. 137 (lines 10-13)].

{15}. On 5 June 1990 during Brown's Superintendency (at which time Cotugno was Personnel Director) Plaintiff sent a memo (copied to Cotugno) to Director of Pupil Services John Quatrini describing sources from which Spanish-speaking administrators and professional staff could be recruited. [E-7: Moss Interrogatory Answer 11, ¶¶ 256-261]. [E-15: Moss Deposition: p. 137 (lines 7-10); p. 136 (lines 19-23); p. 280 (lines 8-23)].

{16}. The latest of these memos was sent to Cotugno on 12 March 1991, 3-1/2 months before he became Interim Superintendent. [E-7: Moss Interrogatory Answer 11, ¶¶ 261-278]. [E-4: Rivera Affidavit, ¶¶ 1-14]. [E-3: Seavey Affidavit, ¶¶ 148-149, 158-162]. E-15: Moss Deposition: p. 137 (lines 7-10); p. 138 (lines 14-19); p. 280 (lines 8-23); p. 281 (lines 1-14)].

L.R. 7.1 ADMITTED STATEMENTS

{18}. Dr. Moss received an excellent and outstanding 1990-1991 annual Evaluation from Superintendent Alan Brown, making a total of 3 excellent and outstanding Evaluations from Superintendent Alan Brown. [E-1: DOCUMENTS: Exhibit "K"]. [E-2: Brown Affidavit, ¶¶ 67].

{20}.On 1 July 1991 GASD Personnel Director Arthur Cotugno became Interim Superintendent of the GASD. [E-1: DOCUMENTS: Exhibit "W", p. 1, ¶ 3].

{22}. On 23 July 1991 Arthur Cotugno initially rejected a plan by Dr. Moss and other GASD staff to invite educator William Powell who was an African-American to be an "Opening Day" speaker at the GASD. [E-7: Moss Interrogatory Answer 11, ¶¶ 99-100]. [E-15: Moss Deposition, p. 357 (lines 4-6)].

{23}. Plaintiff Moss with the support of other Opening Day "committee" members prevailed upon Cotugno to change his decision not to have William Powell as a speaker and was ultimately successful in getting Powell for the speaker. [E-7: Moss Interrogatory Answer 11, ¶¶ 99-100 & Exhibit "4W']. [E-15: Moss Deposition: p. 356 (lines 19-23); p. 357 (lines 1-6)].

{24}. On 28 July 1991 GASD Board member Ferris made the public statement to the newspapers with respect to representation of minority achievements, history, and culture in the school curriculum that some minority contributions have been disasters, and that

> "The Spanish people in South America can't run a country without total chaos", and "You don't find that in western civilization because people are reasonably intelligent and know how to do things". [E-7: Moss Interrogatory Answers: Exhibit "A", pp. 1-3].

[E-15: Moss Deposition: p. 55 (lines 3-7)].

{25}. Subsequent to Charles Ferris' statement, the District and the City experienced an intense and prolonged period of bitter and pervasive racial and ethnic controversy and dissention which spawned daily headlines in the local newspaper, and for the rest of the 1991-1992 school year in one form or another was a major and at many points pre-occupying issue of the Board of Education, the School District, and the City. [E-17: Moss Supplemental Affidavit, Exhibits "A", "B", "C", & "D"]. [E-7: Interrogatory 12, ¶ 59; Moss Interrogatory Answers: Exhibit "A", pp. 3-104]. [E-3: Seavey Affidavit, ¶ 12 and ¶¶ 1-35, 79-86, & 109]. [E-4: Rivera Affidavit, ¶¶ 19-20]. [E-15: Moss Deposition: p. 319 (lines 21-23); p. 320 (lines 1-18)].

{26}. Most of the Latino/Hispanic students in the GASD and Hispanic persons in the Amsterdam Latino/Hispanic community including persons who staged demonstrations at GASD Board meetings and in the District had light or dark brown and/or "black" skin, and were either of African origin or were otherwise racially differentiable from Euro/Caucasian whites. [E-17: Moss Supplemental Affidavit, ¶ 1 & Exhibits "A", "B", "C", & "D"].

{27}. A substantial portion of the Hispanics in the District were "black", i.e., were racially of African descent and were physically and racially the same as so-called "African Americans" (i.e., American "blacks"). Any attempt to make a distinction between insulting or derogatory comments about Amsterdam "Hispanics" and Blacks [i.e., "African Americans" or African-Hispanics] and/or about efforts concerning how to correct discrimination against them in the GASD is untenable in that the actual physical characteristics of many of the persons who are the objects of these comments and attitudes are that they are racially "Black". In fact, the word "nigger" as well as the word "spics" was used by whites in the GASD. [E-17: Moss Supplemental

Affidavit, ¶ 1 & Exhibits "A", "B", "C", "D", & "E"]. [E-3: Seavey Affidavit, p. 20, ¶ "n"]. [E-15: Moss Deposition, p. 55 (lines 3-7) and p. 56 (lines 10-21)].

{28). The complaint and request for intervention sent to NYSED by African-American parent Tama Seavey who was most proximately responsible for the SED investigation of GASD, complained of discrimination against African-American students and African-American parents as well as Hispanics; was in fact the only civil rights activist to publicly single out Cotugno by name and accuse him of personally having an "appalling lack of concern for our minority students" was "black"/"African American" parent Tama Seavey and the most aggressive and confrontational, intrusive protester was a "black"/African-"Hispanic" Ivette Perez. [E-7: Moss Interrogatory Answer 11: pp. 116-117, ¶¶ 300-303 & 310; Exhibit "A"; pp. 45, 47, 53; & Exhibit "9D"]. [E-3: Seavey Affidavit, ¶ 115 & Exhibit "D"]. [E-17: Moss Supplemental Affidavit, Exhibit "A"]. [E-15: Moss Deposition: p. 316 (lines 14-23); p. 317 (lines 1-23); p. 318 (lines 1-23); p. 320 (lines 1-4)].

{29). Ferris did not include in his remark [#{24} supra] or make such remarks about the largely Caucasian-populated European country of Spain. [E-7: Moss Interrogatory Answer 12, ¶ 3].

{30). Later in an August 1993 article the Schenectady Gazette reported that GASD Board member Ferris stated:

> "There's too many of them in this city." ...
> "They've flocked up to Amsterdam
> from New York. You can ask anybody.
> They're not happy about the Hispanics
> being here. We'd be happy if they all
> went away."

> "A lot of them are indigent. A lot of them are on welfare. They have problems with achievement in school. They don't do as well as the whites."

[E-7: Moss Interrogatory Answer 11, pp. 206-207, ¶¶ 727-732, Exhibit "A", pp. 119-131].

{31). Even though Ferris resigned from the Board under public pressure because of the August 1993 comment, the Board immediately appointed him to the influential GASD Finance Committee. [E-7: Moss Interrogatory Answers: Exhibit "A", pp. 129-131].

{32}. On 9 August 1991 John Miller again reminded Plaintiff Moss that he was the one who had "had a dream that [her] husband was black". [E-7: Moss Interrogatory Answer 9, ¶¶ 7-12; Interrogatory 12, ¶ 4].

{33}. After many communications between GASD and NYSED and several months [August, September, and November of 1991] of the continuation of the racial controversy and newspaper publicity leading up to it, in November 1991 the NYSED undertook an investigation of the GASD for discrimination and racism. [E-3: Seavey Affidavit, ¶¶ 91-93]. [E-7: Moss Interrogatory Answer 11, ¶¶ 300-311].

{35}. In August 1991 through September 1991 in a series of meetings and memos (culminating in Plaintiff's 18 September 1991 six-page letter of opposition and correction which culminated in a 26 September meeting) at which Cotugno and Director of Pupil Services John Quatrini (and sometimes Middle School Principal Claude Palczak) were present, Plaintiff brought her opposition to and correction of the discriminatory dumping of ESL Hispanic and handicapped students into her Compensatory Programs to a successful conclusion. [E-13: ¶ 43 & Exhibit "R"]. [E-7: Moss

Interrogatory Answer 11, ¶¶ 130-173 & Exhibit "7Z"].

{36}. The misplacement of Hispanic students became publicly known in a 2 October 1992 newspaper article adding to the already race-charged environment and firestorm of controversy in the District. [E-7: Moss Interrogatory Answer 11, ¶¶ 149-154]. [E-3: Seavey Affidavit, Exhibit "D", p. 4, ¶5 of § #5].

{37}. But when at her insistence the arrangement for the proper placement of the Hispanic students was accomplished, Cotugno in a 3 October 1991 newspaper article took credit for this accomplishment and gave credit for it to practically everyone in the District except Moss. [E-7: Moss Interrogatory Answer 11, ¶¶ 157- 173].

{38}. In the 3 October 1992 newspaper article Cotugno was quoted as saying that "Many of the compliance issues have been taken care of and others are being addressed" and yet he did not even mention Moss in the article or gave her any credit for having turned the Program around, nor did he do so on her 14 February 1992 Evaluation. [E-7: Moss Interrogatory Answer, ¶¶ 157 & 150-161].

{39}. Nor did Cotugno ever give Moss acknowledgement or credit on her 14 February 1992 Evaluation for her accomplishment with respect to the proper placement of the Hispanic and handicapped students. [E-1: DOCUMENTS: Exhibit "0"].

{41}. In his 31 March 1992 RDDIR to NYSDHR, Cotugno referred to Plaintiff's successful correction of and opposition to the Hispanic and handicapped placement as "a difficulty with the Director of Pupil Personnel [sic]" (i.e., John Quatrini: referred to in documents in support of this

motion as Director Of Pupil Services, which upon information and belief is the correct title). [E-1: DOCUMENTS: Exhibit "W", p. 3, §7, ¶2].

{42}. Cotugno in his August 1992 ATAC indicated that Plaintiff's correction of the placement situation was a termination reason that he by inclusion described as a "job performance deficiency". [E-1: DOCUMENTS: Exhibit "2M", p. 10, ¶ 23].

{45}. The K-6 Social Studies curriculum (2 October 1991) in which Plaintiff specifically and publicly enunciated purposes of increasing ethnic and cultural understanding and harmony contained "strands" to achieve this purpose. [E-7: Moss Interrogatory Answer, ¶¶ 108]. [E-5: Nellie Bush Deposition]. [E-15: Moss Deposition: p. 314 (lines 20-23); p. 315 (lines 1-6)].

{49}. On 10 October 1991, High School Principal Bert DeRose was quoted in the newspapers as stating that, "I do not know of any bias-related incidents at this high school. None have been brought to my attention". [E-7: Moss Interrogatory Answer, ¶¶ 40-44].

{50}. Cotugno refused Dr. Moss' request for an assistant even though it would have cost the GASD nothing extra as it was included in a grant and male Director Quatrini had an assistant. [E-7: Interrogatory Answer 14, ¶¶ 1-2, 4-5, 7-11, 17, 18, 20]. [E-15: Moss Deposition, p. 72 (Lines 19-23)].

{51}. The above stated refusal came in a context where Moss was doing 5 positions, that of 2 Assistant Directors of Instruction, ESL Program, IMC Coordinator, and her own and had been consistently refused requests for an assistant for budgetary reasons under Brown, but the assistant requested from Cotugno would not have cost the District any

money (i.e., it would have been paid for by the State grant -- and Cotugno's refusal was not budgetarily motivated. [E-15: Moss Deposition: p. 346 (lines 20-23); p. 347 (lines 1-14); p. 338 (lines 13-23); p. 339 (lines 1-7); pp. 350-351]. [**Cotugno Affidavit**, GASD's Exhibit "I", ¶ 13]. [E-17: Moss Supplemental Affidavit, ¶ 37].

{53}. In October 1991 Mr. Cotugno instructed Dr. Moss to gather up and make into a packet all the diversity and multicultural activities that the GASD had developed under her Directorship with the intent of submitting this packet to NYSED in an attempt to give the NYSED the impression that he and the GASD were addressing the race-related problems that the District was having. [E-7: Moss Interrogatory Answer, ¶¶ 307-310].

{54}. Mr. Cotugno told the newspapers on 29 Oct. 1991 that the packet [i.e., # {53} supra] showed that there were "good things going on in the district", but he never gave Moss any credit, acknowledgement, or praise with respect to these materials or with respect to the "good things" on her 14 February 1992 Evaluation or anyplace else. [E-7: Moss Interrogatory Answer, ¶¶ 307-310 & Exhibit "9C"].

{61). Dr. Moss sent Superintendent Cotugno a 6 November 1991 memo of opposition and correction requesting a meeting to discuss and resolve Mrs. Mary Margaret Gage's feeling that she was being treated unfairly by Mr. Cotugno. Cotugno never responded and the matter was still unresolved as of 30 June 1992. Dr. Moss was Mrs. Gage's immediate supervisor. [E-7: Interrogatory 19, ¶¶ 31-41].

{67}. On 16 January 1992 Cotugno refused to fully fund Moss' curriculum budget, which was the first time in her employment that her proposed curriculum writing budget was not fully funded. [E-7: Moss Interrogatory Answer 11, ¶ 333].

L.R. 7.1 ADMITTED STATEMENTS

{68). On 17 January 1992 Cotugno sent Moss a job vacancy notice and application for employment in another District and wrote on it "this looks like a good opportunity". [E-1 DOCUMENTS: Exhibit "N"]. [E-7: Moss Interrogatory Answer 11, ¶¶ 334-338]. [E-15: Moss Deposition: p. 320 (lines 20-23); p. 321 (lines 4-16); p. 328 (lines 17-23)].

{69}. The SED Report released to the public on 26 January 1992 found the GASD was permeated with "a negative tone" at every level (including the Board of Education) with respect to race and ethnicity and treated minority students disparately to and with lower expectations than white students to the detriment of said minority students. [E-7: Moss Interrogatory Answer: Exhibit "A", pp. 64-79]. [E-3: Seavey Affidavit, ¶ 93]. [E-4: Rivera Affidavit, ¶¶ 14-19]. [E-7: Moss Interrogatory Answer 11, ¶¶ 356-369]. [E-1: DOCUMENTS: Exhibit "L", pp. 3-8]. [E-16: Cotugno Deposition: p. 134 (line 5); p. 136 (lines 12-23) — p. 139 (line 23)]. [E-15: Moss Deposition: p. 147 (lines 13-16, & 23); p. 148 (lines 1-3, 5, 8, &19); p. 149 (line 17); p. 150 (line 18); p. 151 (lines 17-19, 20-23); p. 152 (lines 1-4)].

{75). On 1 February 1992 Plaintiff wrote Cotugno a tactful letter of opposition to his treatment of her reminding him that she had been developing discrimination correcting and multicultural projects and activities in the District since she arrived in the District and even "at a time when no one else wanted to be involved or participate". [Moss Interrogatory Answer 11, ¶¶ 397-404]. [Moss Interrogatory Answer 14, ¶¶ 1-22].

{76}. From 2 Feb. to 10 Feb. 1992 (4 days before Plaintiffs 14 Feb. Evaluation), Cotugno and the Board publicly condemned the findings of the SED Report in Board of Education meetings and in the newspapers with name-calling such as "witch hunt", "misrepresentations", "self-professtations", and open public retaliatory threats against a

female principal for her participation in the investigation and against others. [Moss Interrogatory Answer 11, ¶¶ 405-429]. [E-3: Seavey Affidavit: ¶¶ 98-105, 117-128, 138-141]. [E-15: Moss Deposition: p.126; p. 128 (lines 11-21); p. 129 (lines 9-11); p. 130 (lines 21-23); p. 131 (lines 1-4, 5-23); p. 132 (lines 1-22)].

{77}. On 8 February 1992 (6 days prior to Plaintiff's 14 February 1992 Evaluation) the Recorder newspaper stated that:

> "What makes Amsterdam stand out from the rest, according to SED officials, is the suspicion which greeted the SED visit in Amsterdam and the hostility which still accompanies many Board of Education discussions about the SED report." [E-7: Exhibit "A", p. 87].

See also: [E-3: Seavey Affidavit, ¶¶ 115-128, 133-141, 170-177, 196, 219-221] & [E-4: Rivera Affidavit].

{78}. On 11 February 1992, 3 days before he wrote Plaintiffs 14 February Evaluation, Cotugno sent Plaintiff the second of two job vacancy notices and job applications for employment in another District. [E-1: DOCUMENTS: Exhibit "N"]. [E-7: Moss Interrogatory Answer 11, ¶¶ 440-448]. [E-15: Moss Deposition: p. 122 (lines 12-18), p. 322 (lines 4-11), & p. 328 (lines 12-23)].

{80}. In the midst of a bitter racial controversy and negative angry public statements by Cotugno and some Board members over whether the SED Report was correct in its findings (i.e., which findings translated in the common language of discussion and public debate to whether there was racism and discrimination in the GASD), on 14 February 1992 Cotugno wrote the first and only negative (in fact first and

only less-than-outstanding) job performance Evaluation that Moss had received while in the employment of the GASD. [E-1: DOCUMENTS: Exhibit "O"]. [E-7: Moss Interrogatory Answers: Exhibit "A": pp. 81-90]. [E-1 DOCUMENTS: Exhibit "2M", p. 3, ¶6]. [E-13: Moss Affidavit Re Interpersonal Relationships]. [E-2: Brown Affidavit]. [E-7: Moss Interrogatory Answer 11, ¶¶ 478-481]. [E-15: Moss Deposition: p. 218 (lines 6, 9, 17); p. 219 (lines 13-23); p. 220 (lines 1-17); p. 293 (lines 2-3 & 6-10); p. 221 (lines 1-23); p. 222 (lines 1-23); p. 223 (lines 1-23)].

{82}. In a 28 February 1992 administrators' meeting, 4 days after he sent the only unfavorable Evaluation that Moss had ever received while employed by the GASD and in Moss' presence, Cotugno angrily and repeatedly referred to the SED Report's findings and recommendations as "They are doing it to us with vaseline". [E-7: Moss Interrogatory Answer 11, ¶¶ 506-518]. [E-1: DOCUMENTS: Exhibit "2M", p. 3, ¶ 6]. [Moss Deposition: p. 167 (lines 20-23) through p. 168 (lines 1-5)].

{84}. In the 2-3 March 1992 post-evaluation conference (requested by Plaintiff) Cotugno asserted that it would be premature, improper, and unfair to make a decision at that time on whether Plaintiff would be granted tenure; then within seconds after asserting that it was premature, improper, and unfair to make such a decision Cotugno said to Moss:

> "It would be advisable for you to see if there is something better for you. You have a lot of capabilities. This is a district in flux. I have concerns. I do not know how to advise you. You have to do what you have to do. If there is another opportunity you should take advantage of it."

L.R. 7.1 ADMITTED STATEMENTS

[E-1: DOCUMENTS: Exhibit "P", p. 10, ¶ 4]. [E-7: Moss Interrogatory Answer 11, ¶¶ 538-544]. [E-15: Moss Deposition: p. 246 (lines 9-10, 13); p. 248 (lines 3-10); p. 293 (lines 8-10); p. 374 (lines 15-23); p. 375 (lines 1-2)].

{85}. On 6 March 1992 Plaintiff filed a Complaint with NYSDHR and federal agency EEOC. [E-1: DOCUMENTS: Exhibit "Q"]. [E-7: Moss Interrogatory Answer 11, ¶ 545].

{87}. The Human Rights Complaint was received by the GASD on or about 11 March 1992 [E-1: DOCUMENTS: Exhibits "S", "T", and "U"].

{88}. Plaintiff sent Cotugno a Response to his 14 February 1992 Evaluation, which was dated 11 March 1992, which was an explicit letter of opposition that accused him of race and sex discrimination and retaliation against her. [E-1: DOCUMENTS: Exhibit "R", p. 3, ¶¶ 1 & 2, 13]. [E-7: Moss Interrogatory Answer 11, ¶¶ 546-549].

{90}. Five working days after receiving Moss' Human Rights Complaint and her 95-page letter of opposition and "Response" to the 14 February 1992 Evaluation Cotugno publicly announced his resignation [to be effective as of July 1992] after having been permanent Superintendent for only three months and giving nonsensical incoherent reasons for his decision to leave. [E-7: Moss Interrogatory Answer, ¶¶ 550-555]. [E-16: Cotugno Deposition, pp. 12 (lines 19-23) – 15 (lines 1-21)]. [E-15: Moss Deposition: p. 335 (lines 1-23); p. 336 (lines 1-8)]. [E-7: Interrogatory Answer 25, ¶ 43].

{95}. On 21 April 1992 while reviewing the program for the release of the GASD PLAN, when he got to the part in the Program where the cheerleading squad was scheduled to do a high kick routine, Cotugno looked over at the High School Principal, Bert DeRose, who was sitting next to Dr. Moss and made the comment "then the Rockets do a strip,

Errata Note: In {¶95}, Rockets is a typo for Rockettes.

right Bert?". Cotugno has tacitly admitted this by offering an explanation for it, i.e., that the comment "was not directed to complainant". [E-7: Moss Interrogatory Answer: Exhibit "A", p. 95]. [E-1: DOCUMENTS: Exhibit "2M", p. 6, ¶ 13]. [E-7: Moss Interrogatory Answer 11, ¶¶ 604-619 & 607-612]. [E-3: Seavey Affidavit, ¶¶ 135, 139, 172]. [E-7: Moss Interrogatory Answer 25, ¶¶ 11-14]. [E-7: Moss Interrogatory Answer 19, ¶¶ 48-52]. [E-15: Moss Deposition: p. 169 (lines 17-23) through p. 170 (lines 1-5 & 8-23); p. 171 (lines 1-14)].

{98}. On 22 April 1992 the GASD PLAN [i.e., the District's Plan to implement the recommendations of the SED Report on racism to correct the racial "negative" environment which was found by SED to exist in the GASD] was released to the public and said GASD PLAN was based almost entirely on programs and activities that had been administratively initiated and/or developed by Moss and a great part of most of the PLAN described such discrimination correcting programs and activities as having been "on going" since the 1990-1991 school year [i.e., when Moss came to the District]. [E-1: Frequently Cited Documents Exhibit "Y"]. [E-7: Moss Interrogatory Answer 11, ¶¶ 599-603]. [E-7: Moss Interrogatory Answer 20].

{99}. Cotugno presented the GASD PLAN in the Recorder newspaper as being a document that the District could "be proud of", "an accountability manual" and the newspapers reported that some in the District referred to it as "a blueprint for the district's future". [E-7: Moss Interrogatory Answers: Exhibit "A", p. 92]. [E-7: Moss Interrogatory Answer 11, ¶ 603].

{100}. On 22 April 1992 Board member Charles Ferris publicly announced that he and the Board had a "problem" with some of the recommendations in the GASD Plan, but said he did not "want to be too specific since many of the issues involve minorities[.]" [E-7: Moss Interrogatory Answer 11, ¶¶ 620-623].

L.R. 7.1 ADMITTED STATEMENTS

{101). At that very same 22 April 1992 Board meeting Plaintiff was brought before the Board to discuss her contract and Defendants refused to say at that time whether or not her contract would be renewed citing as a reason their alleged need to consider Cotugno's 14 Feb. 1992 Evaluation of Moss. Defendants spoke to Moss through Board lawyer William Mycek rather than through Cotugno, yet within several minutes Cotugno spoke directly to and personally engaged in contract talks with Director John Quatrini. [E-7: Moss Interrogatory Answer 11, ¶¶ 620-665]. [E-7: Interrogatory Answer 25, ¶¶ 15-21].

{102}. Said treatment of talking to her through their Attorney instead of through the Superintendent occurred approximately six weeks after Moss filed a Human Rights Complaint against GASD. [E-1: DOCUMENTS: Exhibit "Q"].

{106}. When on 8 June 1992 the Recorder newspaper announced that Moss had been named an IDEA fellow and was among "one percent of outstanding American educators selected to attend the IDEA Program" Arthur Cotugno did not acknowledge this achievement in any way and in fact terminated Plaintiff a week later. [E-7: Moss Interrogatory Answer 11, ¶¶ 691-694].

{107}. On 10 June 1992 Cotugno withdrew his resignation one week before he recommended the termination of Moss giving reasons which were inconsistent with published facts and his own prior statements. [E-7: Moss Interrogatory Answer 11, ¶¶ 695-704]. [E-15: Moss Deposition: p. 335 (lines 10-23); p. 336 (lines 1-8)]. [See also Material Fact (92) supra].

{108}. At approximately 3:45 pm. on 17 June 1992 Cotugno handed Plaintiff a letter stating that he intended to recommend her termination at that night's 7:00 p.m. Board of Education meeting; Cotugno's contract was finalized at the

very same meeting in the very next motion. [E-1: DOCUMENTS: Exhibit "2A" motions 8e and 8f]. [E-1: DOCUMENTS: Exhibits "B" - "2C"]. [E-14: Moss Affidavit Re DISPARATE TREATMENT]. [E-7: Moss Interrogatory Answer 11, ¶¶ 706-712-736]. [E-7: Moss Interrogatory Answers 22-30, 32, and 33-38]. [E-3: Seavey Affidavit, ¶¶ 178-196, 215]. [E-3: Seavey Affidavit, Exhibit "D"]. [E-4: Rivera Affidavit, ¶18 and ¶ 20]. [E-15: Moss Deposition: p. 138 (lines 5-6 & 8); p. 259 (lines 18-23); p. 260 (lines 1-3); p. 335 (lines 16-23); p. 336 (lines 1-8 & lines 18-20)].

{109}. Plaintiff applied for both of the new Elementary and Secondary Director of Instruction positions that had been created on 18 June 1992 after her K-12 Director of Instruction position was discontinued, but she was neither interviewed nor hired for either position. [E-1: DOCUMENTS: Exhibits "2D", "2E", "2F", "2G", "2H", "2I", "2J", "2K", "2L", "2M", & "2N"]. [E-15: Moss Deposition: p. 337 (lines 18-23); p. 338 (lines 1-12)].

{111}. In making employment decisions about Plaintiff on 14 February 1992, 22 April 1992, and 17 June 1992, the GASD used a standard of evaluation, termination, and tenure granting which was disparate to that standard used to make employment decisions about white male non-interracially married directors who did not use the considerable influence of their office to correct discrimination in the District and to the contrary at times contributed to it such as specifically Directors Limoncelli, Quatrini, Trzaskos, Wyszomirski, Caruso, Cotugno, Business Manager Seward, Athletic Director and Health Coordinator Giovanni, and non-interracially married female Director of Secondary Janice Dyer in that these central administration staff in fact had many of the job performance difficulties which were falsely attributed to Plaintiff in her 14 February 1992 Evaluation and the 17 June 1992 termination letter and yet these persons were

not terminated and were granted tenure by the GASD. [E-2: Brown Affidavit, ¶¶ 68-71]. [E-14: Moss Affidavit Re Disparate Treatment]. [E-7: Moss Interrogatory Answer 14]. [E-15: Moss Deposition: pp. 121-124; pp. 196 -205; p. 222 (lines 1-17); p. 328 (lines 12-23), p. 329 (lines 1-2)]. [E-5: Bush Deposition: re Trzaskos, p. 50, line 14 - p. 53 (line 12); re Limoncelli, p. 28, lines 21-23 through p. 29, line 1 AND p. 41, line 20 through p. 42, lines 5-6, 16-20 & p. 43, lines 1-5]. [E-16: Cotugno Affidavit {Defendants' Exhibit "I", ¶ 11)].

{113}. Cotugno changed the job requirements for the two Director positions in June 1992, thereby eliminating Dr. Moss as the only in-house candidate. He deleted "Doctorate desirable", "building administration experience" requirement, and "central office administrative experience desirable". By deleting the first two aforementioned job requirements Cotug-no eliminated the exclusive labor pool consisting of the most highly qualified candidates who were both females, Dr. Donna Moss and Dr. Jayne Steubing. [E-14: Disparate Treatment Affidavit, ¶¶ 83-105]. [E-7: Interrogatory 19, ¶¶ 56-58].

{114}. In the entire history of the GASD up to and including the present time, no Director who was placed on a tenure track [i.e., probationary status] was ever denied tenure and 100% of said untenured white male Directors who were placed on tenure tracks were in fact granted tenure as Directors. [E-14: Moss Affidavit Re Disparate Treatment, ¶¶ 1-117]. [E-7: Moss Interrogatory Answer 15, ¶¶ 86 & 87]. [E-16: Cotugno Deposition: p. 27 (lines 16-23) through p. 32 (lines 1-23)].

{115}. All GASD Directors in the history of the GASD up to and including the present time were granted tenure after completing and/or some time during their probationary period with the sole exception of Dr. Donna Moss. [E-7: Moss Interrogatory Answer 15, ¶¶ 86 & 87]. [E-4: Rivera Affidavit, ¶¶ (16-20].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

14 FEB. 1992 EVALUATION TERMINATION REASON

[1]. GASD's 31 March 1992 RDDIR to the Division of Human Rights contains Defendant GASD's explanation of what specifically Superintendent Arthur Cotugno was purportedly referring to by the conclusory statements contained on his 14 February 1992 Evaluation of Plaintiff Moss. [E-1: Exhibits "0" & "W" (pp. 2-6)].

INTERPERSONAL RELATIONSHIPS/
LEADERSHIP & MOTIVATION
(from 14 Feb. 1992 Evaluation: E-1: Exhibit "0")

[3]. Mr. Cotugno admitted that the 14 Feb. 1992 Evaluation does not "pertain to any incident with Quatrini" and that due to Quatrini's own interpersonal and job performance deficiencies he [Cotugno] put considerably less weight on the allegations that Quatrini allegedly made and that he [Cotugno] did not put "much credibility in" those alleged allegations. [E-16: Cotugno Deposition: p. 71 (lines 20-23), p. 72, p. 77].

[4]. In his 31 March 1992 RDDIR, Cotugno characterized Dr. Moss' correction of discrimination against Hispanic and ESL students who had been dumped into her remediation courses as what he meant as "ineffective outcomes" occurring at times between Dr. Moss and central office and unit administrator colleagues. [E-13: ¶¶ 23-28, 29-32, 40-45, 46-49, 50, 60-65, 66].

[7]. John Quatrini had job performance problems and conflicts and/or issues with other staff, parents, and Board of Education members. E.g., Conwall: [E-5: Bush Deposition: p. 68 (lines 1-15) and E-13: ¶ 8]; [E-6: Ruf Lawsuit: Exhibit "A", ¶¶14-17]; Caruso: [E-13: ¶¶ 5-7]; Principals: [E-13: ¶10];

1. Admissions of GASD are at **A-84-A-90**; of Cotugno at are **A-94-A-101**.

Board of Education: [E-13: ¶ 12]. Quatrini's loud public altercations were also cited in Recorder 1992-1993 newspaper articles [E-13: ¶¶ 20-21].

[8]. Cotugno himself had severe and protracted interpersonal and job performance difficulties with John Quatrini, which he documented on 11 September 1991 [E-13: ¶ 16], 6 Dec. 1991 [E-13: ¶ 17], 26 Dec. 1991 [E-13: ¶ 18], and 2 Jan. 1992 [E-13: ¶ 19].

ABDEL SHARIFI

[11]. Cotugno admits the 31 March 1992 RDDIR is false re. Sharifi (i.e., that the 14 Feb. 1992 Evaluation allegation was not based on Sharifi). [E-16: Cotugno Deposition: p. 83 (lines 17-23) and pp. 80 (line 7) - 102 (line 20)].

[12]. Abdel Sharifi was a chairperson, not a central office administration colleague or unit administrator; Cotugno knew this. [E-13: ¶¶ 118-121]. [E-16: Cotugno Deposition, p. 80 (lines 15-23) – p. 81 (lines 1-4 and 12-17)].

[13]. Abdel Sharifi had disciplinary problems with finishing his work assignments on time and his interpersonal relationships with his students, staff, with women staff, and with highly qualified females, and Cotugno was perfectly aware of this. [E-13: ¶¶ 122-136, 138, 139, 140, 141, 142, 143, 144-147, 148-149, 150-155, 156-165]. [E-16: Cotugno Deposition, pp. 88 (lines 2-23) – 91 (lines 1-12) and p. 9 (lines 8-15)].

[14]. Dr. Moss' behavior and comportment towards Sharifi was friendly, fair, professional, and appropriate and Cotugno never wrote her a letter of reprimand or correction stating otherwise. [E-13: ¶¶ 136, 166, 168-170].

[15]. Sharifi, who was a member of a union, never filed any grievance against Dr. Moss. [E-13: ¶ 171].

[17]. GASD has presented no sworn affidavit from Abdel Sharifi and no proof whatsoever beyond their own barebones articulation that Abdel Sharifi ever made any comments to Arthur Cotugno about Dr. Moss prior to the writing of the 14 February 1992 Evaluation and such documentation and evidence as does exist indicates that no such conversation ever took place. [E-13: Interpersonal Relations Affidavit: p. 35 (¶ 118), pp. 47-48 (¶ 156), pp. 167-174]. [E-13: pp. 35-54].

PAUL DIMASCIO

[18]. Mr. Cotugno admitted that his 31 March 1992 RDDIR was false and mendacious in that he did not base the interpersonal relations recommendation in Dr. Moss' 14 Feb. 1992 Evaluation on any alleged incident concerning DiMascio as claimed in the 31 March 1992 RDDIR.

[19]. Paul DiMascio was a chairperson, not a central office administration colleague or unit administrator as specified by the 14 February Evaluation.

[20]. DiMascio's memos taking exception to Dr. Moss' Evaluation of him proffered by GASD concerned legitimate disciplinary actions by Moss as the Director of Instruction which occurred before the 1 July 1991-14 February 1992 Evaluation period and which were handled by Moss in close consultation with and pursuant to the direction of GASD Superintendent Brown who attempted to terminate DiMascio, as Mr. Cotugno is perfectly aware. [E-16: Cotugno Deposition, p. 54 (lines 4-19)].

[21]. Paul DiMascio was a problem employee who had severe job performance deficiencies and interpersonal relationship difficulties with other staff, none of which were caused by Plaintiff, and Cotugno knew this. [E-13: ¶¶ 181-203, 242-243].

[22]. Cotugno himself had problems with DiMascio and indicated to DiMascio that he (DiMascio) did not know

his job responsibilities. [E-16: Cotugno Deposition: p. 112 (lines 7-23) - p. 113 (lines 2-4)].

[24]. DiMascio, who was a member of a union, never filed any grievance against Dr. Moss. [E-13: ¶¶ 234-235, 241].

[25]. GASD has presented no sworn affidavit from DiMascio or proof beyond their barebones articulation that Paul DiMascio had any discussion with Arthur Cotugno disclosing any alleged `ineffective outcomes" or alleged "interpersonal conflicts" and in fact there was no such communication and there were no such incidents or occasions of ineffective outcomes or interpersonal conflicts during the period of 1 July 1991-14 February 1992. [E-16: Cotugno Deposition: p. 114 (line 13) – p. 115 (line 21), p. 116 (lines 14-17), p. 118 (lines 11-14), p. 119 (lines 2-4), p. 120 (line 23) – p. 121 (lines 1-16), p. 130 (lines 13-23) - p. 132 (line 20), & p. 134 (lines 5-9)]. [E-13: ¶¶ 231-247]. [E-7: Interrogatory Response 11, p. 178 (¶ 583) – p. 180 (¶ 593)].

JAYNE STEUBING

[27]. Dr. Steubing sent Dr. Moss positive friendly notes and Dr. Moss and Dr. Steubing had a productive cooperative relationship. [E-13: ¶¶ 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 288, 289, 290, 291, 298, 299, 310, 311, 314, 315, 317, 321, 322, 325, 326-328, 330, & 331-335]. Dr. Moss also sent Dr. Steubing positive notes. [E-13: ¶¶ 286, 287, 312-313, 316, 318, 319, 320, 324, & 329].

[28]. In her 30 March 1992 letter to William Mycek, Dr. Steubing indicated that Mycek solicited information from her (Steubing) in March 1992 and Cotugno did not in fact have this information available to him when he wrote the 14 February 1992 Evaluation of Moss in support of which Steub-ing's name is cited in GASD's 31 March 1992 RDDIR to NYS

Division of Human Rights. [E-13: ¶¶ 250-252 & 306-307]. [E-16: Cotugno Deposition: p. 140 (line 22) – p. 141 (line 3)].

[29]. The incidents referred to in Dr. Steubing's 30 March 1992 letter to Board Attorney William Mycek all occurred in 1990 during Brown's superintendency over a year before the 1 July 1991 - 14 February 1992 Evaluation period even began and all said incidents involved legitimate disciplinary interaction with Dr. Steubing concerning her various attempts to committing to and announcing projects which would have to be funded out of Dr. Moss' Office of Instruction Budget before obtaining Dr. Moss' review and approval. [E-16: Cotugno Deposition, p. 54 (lines 4-19)] [E-13: ¶¶ 297-299].

[30]. The incident that Dr. Steubing described concerning the phonics books was a legitimate disciplinary interaction undertaken at the directive of Superintendent Brown; Dr. Steubing received a memo from Alan Brown for not having her staff follow procedures, but having them go directly to Board of Education members first to obtain phonics books. Dr. Moss spoke to Dr. Steubing re. this also, and Dr. Steubing sent Dr. Moss a note thanking her for, among other things, her "professionalism" and "being a breathe of fresh air" which directly contradicts Dr. Steubing's hyperbole about "flogging". [E-13: ¶¶ 292-296 & 299]. [E-16: Cotugno Deposition, p. 54 (lines 4-19)].

[31]. The May 1992 memo that GASD attached to their interrogatory response as purportedly "relating" to their allegation that Dr. Moss was terminated for personal conflict with Jayne Steubing are plain everyday communications. The April 1992 note is not even addressed to Dr. Moss, it is addressed to Arthur Cotugno and is entirely cryptic. Neither communication has anything to do with interpersonal relations. [E-13: ¶¶ 260-273]. [E-16: Cotugno Deposition: p. 54 (lines 4-19)].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

[32]. Dr. Steubing had interpersonal conflicts with Principal Nellie Bush [E-13: ¶ 300] & [E-5: Bush Deposition, p. 49 (lines 11-23), p. 50 (lines 3-6)]; Director John Quatrini [E-13: ¶ 301]; Middle School Principal Palczak [E-13: ¶ 302]; Director Ron Limoncelli [E-13: ¶ 303]; and Superintendent Brown [E-13: ¶ 304]. [E-2: Brown Affidavit: ¶ 30].

[35]. Dr. Steubing applied for Plaintiff's job as Director of Instruction both in 1989 when Plaintiff was hired and in 1992 when Plaintiff was terminated. [E-13: ¶¶ 248-249].

MARGERY ZUCKER

[36]. Margery Zucker had not been employed in GASD for two years when Cotugno wrote Dr. Moss' 14 February 1992 Evaluation; Mr. Cotugno admitted that the Zucker 1990 allegations were outside of his stated time parameters for his 14 February 1992 Evaluation of Moss. [E-13: ¶¶ 355-356]. [E-16: Cotugno Deposition: p. 143 (lines 13-16)-p. 145 (line 19) & p. 54 (lines 4-19)].

[37]. Margery Zucker never lodged a complaint or grievance against Plaintiff Moss and Mr. Cotugno knew this. [E-13: ¶¶ 357, 368, 369].

[38]. Cotugno in his 10 May 2000 Answer to Dr. Moss' Interrogatory 32 alleges that a note he includes from Dr. Moss to Ms. Zucker shows there were "difficulties and complaints" by Zucker re. her treatment by Dr. Moss. Actually Zucker's note to Dr. Moss says "Attached are orders for AHS & LMS — they are ready to be typed up on POs — take all out of textbook code" and is in fact a benign note. Actually it was Margery Zucker's reply to Dr. Moss and showed her (Zucker) frustration at having been noticed by the Board for termination; somewhat earlier in an attempt to save her job Zucker has presented the Board with a similar though more expanded explanation of what her job entailed. Zucker's

frustration was not directed at Dr. Moss, it was directed pretty much at anyone who would listen including the Board. It is equally obvious that the commonsense meaning of Dr. Moss' note was to do what was necessary to the P.O's [Purchase Orders] to complete them — it would have been ludicrous for Dr. Moss to have listed out every step in her note. [E-13: ¶¶ 359-363, 364].

[39]. Zucker missed deadlines for completion of work for Superintendent Alan Brown and Finance Director Charles Caruso; Mr. Cotugno received a copy of a letter Brown sent to Zucker and was thus aware of this. [E-13: ¶¶ 365-366]. [E-2: Brown Affidavit, If 30].

EMPLOYEES MENTIONED FOR
THE FIRST TIME IN 2001
(from E-8: Exhibit A: Cotugno Interrogatory Response)

RICHARD JANKUNAS

[41]. Mr. Cotugno admitted that the alleged comment of Richard Jankunas did not apply to Jankunas himself — i.e., that there were no personal difficulties between Moss and Jankunas. Moreover, Richard Jankunas is cited by Cotugno for the first time ever in his 10 May 2000 Answer to Dr. Moss' 1996 Interrogatory 32. Cotugno states Jankunas said Dr. Moss had difficulties with subordinates and took dictorial attitude toward subordinates. There are no specific names, dates, events, subject matter, actual words spoken, etc. provided by Cotugno or Jankunas and there is certainly no sworn affidavit from Jankunas attesting that he ever actually made the conclusory statements attributed to him or if [arguendo] he did that those things were true. [E-13: ¶¶ 371-374 & 384-385]. [E-16: Cotugno Deposition: p. 145 (lines 20-23); p. 146 (lines 1-6) - p. 150 (line 9)].

[42]. Supt. Brown commended Dr. Moss for her work and her effective and successful results of that work with Mr. Jankunas; Cotugno was aware of this. [E-13: ¶ 375].

[43].Richard Jankunas and Dr. Moss had positive professional relationships and Dr. Moss sent him information and positive memos; there is no record in Dr. Moss' personnel file of any difficulty with Jankunas. [E-13: ¶¶ 376-381].

JOANNE SPAGNOLA

[45]. Cotugno mentions Joanne Spagnola, his secretary, for the first time ever on his 10 May 2000 Answers to Dr. Moss' 1996 Interrogatory 32. [E-13: ¶¶ 386, 402].

[46]. Cotugno alleges he recommended Dr. Moss' termination because Spagnola allegedly said Dr. Moss "was unorganized particularly with regard to issues concerning the submissions of grant applications..."; neither Cotugno nor Spagnola cite any specific dates, events, or information.

[48]. Dr. Moss was commended for her grant-related work by SED and by Supt. Brown, including her organization-al skills, and Cotugno knew this. Cotugno also reviewed and approved for submission the grants that Dr. Moss wrote. [E-13: ¶¶ 389, 390, 391, 392, 393, 394-395, 396, 398, 403]. [E-16: Cotugno Deposition: p. 150 (line 10) - p. 161 (line 8)].

[49]. Cotugno did not use the opinion of his secretary to decide whether non-interracially married male Directors Limoncelli, Seward, or Trzaskos would receive tenure. [E-13: ¶¶ 404-405]. [E-16: Cotugno Dep. p. 160 (lines. 9-21)].

JAN DYER

[50]. Dyer was a chairperson and not a central office administrator or unit administrator and is not within Cotugno's specified parameters of his 14 February 1992 Evaluation and does not support Cotugno's 14 February 1992 Evaluation allegation about interpersonal relations resulting in "ineffective outcomes". [E-13: ¶ 428].

[51]. Cotugno names Dyer for the first time ever on his 10 May 2000 Answers to Dr. Moss' 1996 Interrogatory 32. [E-13: ¶ 428].

[52]. Cotugno alleges that Dyer said Dr. Moss delegated Dr. Moss' work to chairs, talked down to people, used names and positions of persons not associated with the District in a condescending manner, and took credit for work done by others, but Dyer gave no specific names, dates, times, places, or occasions. GASD has submitted no affidavit from Dyer. [E-13: ¶¶ 428, 429-433]. [E-16: Cotugno Deposition: p. 164 (lines 5-23); pp. 165 - 169].

[53]. Dr. Moss thanked and gave credit to Dyer for work she did and Cotugno knew this, had himself received copies of memos in which Moss had given Dyer credit for her contributions, and in fact admitted that Dyer and Moss seemed to be a "mutual admiration society"; Dr. Moss also sent Dyer information and requested information from her. [E-13: ¶¶ 437, 438-440, 441, 442, 445-450]. [E-16: Cotugno Deposition: p. 170 (line 9) – p. 173 (line 10)].

[54]. Dyer applied for and was hired as Director of Secondary Instruction, which was one of two positions replacing Dr. Moss' when Dr. Moss was terminated. [E-13: ¶¶ 429, 436]. [E-16: Cotugno Deposition: p. 163 (line 21) - p. 164 (line 4)].

GAVIN MURDOCH

[55]. Gavin Murdoch was a chairperson, not a central office administrator or unit administrator, and does not support Cotugno's 14 Feb. 1992 Evaluation allegation of Dr. Moss. [E-13: ¶ 419].

[56]. Cotugno mentions Murdoch for the first time ever on his 10 May 2000 Answers to Dr. Moss' 1996 Interrogatory 32. [E-13: ¶ 406].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

[58]. Cotugno alleges Murdoch said that Dr. Moss talked down to subordinates, used names and positions of people outside the District to establish her credibility, and took credit for work done by others, but Cotugno and Murdoch gave no specific names, dates, time, places, or occasions. [E-13: ¶¶ 413-417].

RONALD LIMONCELLI

[60]. Cotugno alleges for the first time ever on his 10 May 2000 Answers to Dr. Moss' 1996 Interrogatory 32 that he terminated Dr. Moss because Limoncelli [allegedly] said that Dr. Moss "inappropriately disciplined subordinates, failed to help him with curriculum for K-5 Health courses, and Dr. Moss had issues with regard to motivating others." Cotugno and Limoncelli provided no specific names, dates, times, places, or events. [E-13: ¶¶ 478-483]. [E-16: Cotugno Deposition: p. 175 (lines 1-8) & p. 181 (line 4) - p. 191 (line 10)].

[61]. Limoncelli was not the Health Coordinator during Dr. Moss' 1 July 1991-14 Feb. 1992 Evaluation period (he was Health Coordinator prior to 1 July 1991), but was Interim Director of Personnel, and this accusation had never been made before the year 2000. [E-13: ¶ 455]. [E-16: Cotugno Deposition, p. 54 (lines 4-19)].

[62]. Teachers wrote curriculum, not Limoncelli or Director of Instruction Moss; in fact Limoncelli had Health teacher Patricia Trzaskos specifically assigned to develop Health curriculum, and a Health Advisory Committee to aid him, and they developed curriculum -- and Cotugno knew this. [E-13: ¶¶ 458-467, 472, 474-475]. [E-16: Cotugno Deposition: pp. 177-179].

[63]. Dr. Moss served on the Health Advisory Council, which developed recommendations for Staff Wellness to be

submitted to Ron Limoncelli, and Limoncelli sent Dr. Moss a letter of thanks for her work -- all of which Cotugno was perfectly aware. [E-13: ¶¶ 467, 469-471, 473]. [E-16: Cotugno Deposition: p. 179 (line 21) – p. 181 (line 3)].

[64]. It was Limoncelli, not Dr. Moss, that had a record of complaints, grievances (and a retaliation lawsuit by Pam Ruf) for inappropriately disciplining subordinates, as well documented by the grievance report. [E-13: Exhibit "12V"]. [E-5: Bush Deposition, p. 28 (lines 21-23); p. 29 (line 1); p. 41 (lines 20-23); p. 42 (lines 5-6, 16-20); & p. 43 (lines 1-5)]. [E-6: Cometti Affidavit & Ruf retaliation lawsuit. Exhibit "A", ¶¶ 18, 25, 27-33, 82, 188].

[65]. Dr. Moss motivated employees, union officials, Board members, and committees. This is documented by Superintendent Brown and Cotugno knew this. [E-13: ¶¶ 483-484].

[67]. Limoncelli is a Defendant in this case and is currently the GASD Superintendent. [E-13: ¶¶ 452-453].

[68]. Limoncelli reportedly made mendacious and "inconsistent" statements under oath in a lawsuit brought by GASD employee Pam Ruf against the District and his credibility is highly suspect. [E-13: ¶ 454]. [E-6: Cometti Affidavit/Ruf lawsuit, Exhibit "A", ¶ 43].

JOHN GIOVANNI

[69]. Cotugno alleges for the first time ever on his 10 May 2000 Answers to Dr. Moss' 1996 Interrogatory 32 that he recommended that Dr. Moss be terminated because of Giovanni's expressed opinion that Dr. Moss was not involved in curriculum of health, she was unable to motivate others, she was unorganized, and she failed to manage her time efficiently. Giovanni provides no specifics about occasions, events, times, dates, or people. [E-13: ¶¶ 488, 492].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

[70]. Health curriculum was developed over a 5-year period by teachers, Mr. Limoncelli, and Patricia Trzaskos prior to Giovanni's becoming Coordinator of Health Education on September 1991. Shortly after Dr. Moss became Director of Instruction Dr. Moss served on the Health Advisory board and became active in administratively assisting the development of the Health curriculum. Dr. Moss also compiled and coordinated the Tuesday training schedule, which included the Health curriculum. Thus Giovanni's allegation is unfounded and Cotugno admitted that Dr. Moss was indeed involved in the Health curriculum and that he was perfectly aware that she was. [E-13: ¶¶ 467-471, 494-497, 498, 500-501, 503]. [E-16: Cotugno Deposition: p. 19i (line 11)-p. 201 (line 5)].

PAMELA RUF

[73]. Cotugno alleges for the first time ever on his 10 May 2000 Answers to Dr. Moss' 1996 Interrogatory 32 that he recommended that Dr. Moss be terminated because Mrs. Ruf complained that she was allegedly inappropriately disciplined and degraded by Dr. Moss in performing her duties. [E-13: ¶ 504].

[74]. Dr. Moss never disciplined or degraded Pam Ruf, and there is no such record in Dr. Moss' personnel file, which there would be if this was true. Pam Ruf– who filed at least 2 grievances and 1 lawsuit against the GASD, Defendant Cotug-no, Defendant Limoncelli, and Director of Pupil Services Quatrini and various memos of protest against Conwall and Bush--never filed a grievance, letter of protest, or lawsuit against Dr. Moss. In fact to the extreme contrary of what GASD and Cotugno allege, Moss is actually one of the few GASD administrators that Ruf did not either complain and/or grieve against or sue. [E-13: ¶¶ 505-518]. [E-6: Cometti/Ruf

Lawsuit Affidavit & Documents, Exhibit "A", ¶¶ 14-17; Exhibit "B", p. 1, p. 9 (¶¶ 27-28); Exhibit "C", ¶¶ 13-19 & 25]. [E-15: Moss Deposition: p. 124]. [E-16: Cotugno Deposition: p. 201 (line 6) – p. 206 (line 4)].

[75]. Dr. Moss gave Pam Ruf a favorable evaluation and in fact afforded her "greater levels of independence and responsibility". [E-13: ¶ 519]. [E-6: Cometti/Ruf Lawsuit Affidavit & Documents, Exhibit "A", ¶¶ 24 (i.e., Pam Ruf reported to Dr. Moss when she worked at the GASD Instructional Materials Center at that time {12 December 1991}) AND ¶¶ 14-17].

CHARLES CARUSO

[76]. Cotugno alleges for the first time ever on his 10 May 2000 Answers to Dr. Moss' 1996 Interrogatory that he recommended Dr. Moss' termination on June 1992 because in May 1990 Mr. Caruso allegedly stated that he had difficulties with Plaintiff concerning budget issues that included overspending the District's textbook account. [E-13: ¶ 521]. [E-16: Cotugno Deposition, p. 54 (lines 4-19)].

[77]. Mr. Caruso was not employed by the GASD during Dr. Moss' 1 July 1991 – 14 Feb. 1992 Evaluation period, and Cotugno knew this. [E-13: ¶ 522].

[78]. Mr. Caruso had "issues" with Quatrini [E-13: ¶ 523] and Zucker [E-13: ¶ 524].

[81]. As an untenured Business Manager (having replaced Caruso on 30 June 1991) Roger Seward made major mistakes in the budgeting process which totaled to more than 400,000 dollars and became an embarrassing public issue reported in the newspapers and yet Cotugno recommended him for and the GASD Board granted him tenure. [E-13: ¶ 531]. [E-14: ¶ 25].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

PREJUDICE AGAINST MALES

[84]. The evaluations completed by Dr. Moss were fair and no female or male ever filed a grievance against her indicating otherwise. [E-13: ¶¶ 554-557].

INTIMIDATION, HUMILIATION, DICTORIAL LIKE ACCUSATION

[85]. Cotugno admits no memos, no grievances, and no counseling ever occurred with respect to Dr. Moss. [E-16: Cotugno Deposition: p. 235 (lines 12-23) – p. 236 (line 17) ["that's true"]].

[88]. As Cotugno admits, Dr. Moss did much of her work through committees. [E-13: ¶¶ 559-560].

PROCLAIMED SELF ASSISTANT SUPERINTENDENT ACCUSATION

[89]. Defendant Cotugno admits that Moss did not proclaim herself assistant superintendent -- and Cotugno was unable to give any specific occasion when Dr. Moss allegedly self-proclaimed herself to be Assistant Superintendent. [E-16: Cotugno Deposition: p. 243 – p. 251].

[90]. Plaintiff Moss did not self-proclaim herself assistant superintendent as Cotugno alleged in his 31 March 1992 RDDIR and Cotugno knew that this was false. Dr. Moss referred to herself as Director of Instruction on her letterhead, memo pad notes, sign in at Capital Area Assistant Superintendents' meetings [E-16: Cotugno Deposition: pp. 243 – 251] and in her signature on her memos. [E-13: ¶ 561; Exhibits "12G", "12H", and "121"].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

SELF-EXPANDED RANGE OF DUTIES

[91]. Dr. Moss did not create an assistant superintendency or expand her duties as Cotugno alleged. Her duties were expanded and "placed" by the GASD upon her, as stated by Supt. Brown in his Evaluation of Dr. Moss. [E-13: ¶ 562]. [E-2: ¶ 7].

[92]. Specifically GASD "placed upon" Dr. Moss the positions of Assistant Director of Instruction for Elementary, Assistant Director of Instruction for Secondary, and Coordinator of Instructional Materials Center that had been eliminated [E-7: Exhibit "3E"]. [E-2: Brown Affidavit, p. 2, ¶ 7]. [E-7: Interrogatory Answer 14, ¶¶ 1-2, 17].

[93]. Cotugno assigned responsibilities of the English as a Second Language Program from non-interracially married male Director Quatrini to Dr. Moss in October 1991. [E-7: Interrogatory Answer 14, ¶¶ 3, 13-14].

USE OF MEMOS

[96]. Mr. Cotugno admits that extensive documentation by an educational administrator is proper and desirable, that it is something he likes to see, and that no other Director was ever denied tenure because they allegedly used too many memos. [E-16: Cotugno Deposition: p. 252 (line 20) — p. 253 (line 23)].

[98]. Cotugno encouraged untenured male non-interracially married Business Manager Roger Seward to use memos and put things in writing. [E-13: ¶ 568].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

CONCENTRATION ON CURRICULUM
RATHER THAN ADMINISTRATIVE DETAILS
[From 14 February 1992 Evaluation]

[99]. Dr. Moss was an expert in curriculum development and she concentrated intensely on curriculum, leading the District in establishing written courses of study for the K-6 Science and Social Studies curricula (which was a first in the District), establishing a new Alternative Education Pro-gram, the Middle School Program, to name just a few examples out of many. [E-2: Brown Affidavit, ¶¶ 31-41]. [E-l: Exhibit "R": pp. 5-6, # "2" & Exhibit "F"]. [E-2: ¶¶ 9-41]. [E-13: p. 46, ¶¶ 150-152 & p. 52, ¶ 166]. [E-15: Moss Deposition: p. 227 (lines 7-19)]. [E-10: ¶¶ 7-8, 148-158, 171-173]. [E-11: ¶¶ 1, 55, 57, 71, & 90].

PROGRAM EVALUATION
[From 14 February 1992 Evaluation]

[100]. One of the very first tasks that Dr. Moss undertook was to evaluate the entire GASD K-12 curriculum and she continued to do so until her termination. [E-2: Brown Affidavit, ¶¶ 42-49, & Exhibit "H"]. [E-15: Moss Deposition: p. 227 (lines 20-23); p. 228 (lines 1-23); p. 229 (lines 1-5)]. [E-l: Exhibit "R", # "3", pp. 6-9].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

MIDDLE SCHOOL
[From 14 February 1992 Evaluation]

[102]. Dr. Moss wrote and submitted GASD's NYS Education Department Fund for Innovation Grant that contained "clearly defined" Middle School project (e.g., it included 3 phase plan for teaming, curriculum specific planning for instruction, and staff training) and Cotugno was at the GASD Board of Education meeting on 15 August 1990 when Superintendent Brown announced receipt of the grant and Cotugno signed off on Final Reports submitted to SED in August 1991. [E-2: Brown Affidavit, ¶¶ 58-66]. [E-10: ¶¶ 2-9, 37-46, 51-53, 98-99, 100, 101-102]. [E-2: Brown Affidavit, ¶¶ 58-66]. [E-15: Moss Deposition: p. 229 (lines 6-23) through p. 232 (lines 1-23); p. 332 (lines 20-23); p. 333 (lines 1-16); p. 334 (lines 1-9)]. [E-1: Exhibit "R", # 4, p. 9].

[103]. There were 5 Year Plans for curriculum writing, evaluation, textbook acquisition, and staff development training in all curriculum areas and there were also GASD Curriculum Writing Policy and Chairperson Duties and Responsibilities re. curriculum writing. Cotugno was aware of these. [E-10: ¶¶ 11-23, 48-49, & 130-140].

[104]. Dr. Moss coordinated development of K-6 Science and K-6 Social Studies Courses of Study, which were presented to the Elementary Principals at a Sept. 1991 meeting and the GASD Board of Education in October 1991. Cotugno was aware of this. [E-10: ¶¶ 25-30, 68-69, & 71-72].

[105]. Superintendent Brown commended Dr. Moss for her Middle School planning; Board of Education President Shirley Donohue was aware of this as indicated by her letter of recommendation of Dr. Moss – and the other Board of Education members were also, therefore, aware of this or should have been aware of this. [E-10: ¶¶ 33-35].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

[106]. Superintendent Cotugno held meetings with Dr. Moss, Mrs. Phoebe Boschi, and Middle School Principal Palczak to develop and approve Middle School presentation for an October 1991 Board of Education meeting; Cotugno set up the agenda for the meeting (e.g., curriculum content as student schedules) and never indicated that "curriculum planning for instruction [had] not resulted in a clearly defined plan" or that "Middle School planning activity failed to sufficiently address curriculum and its content" or "specificity of program and curriculum". [E-10: ¶¶ 50, 54-59, 60-67].

[107]. Mr. Cotugno himself put the Middle School plan presentation on the Board agenda and personally made the introductory remarks for the presentation to the Board. [E-10: ¶¶ 60-64]. [E-2: Brown Affidavit, ¶ 66].

[108]. Middle School teacher/staff training and staff information sessions were conducted during 1991-1992 and Cotugno was aware of it (e.g., K-6 Math, K-6 Science, Study Skills curriculum, teaming). [E-10: ¶¶ 73-74, 76-79, 80, 85-87, 88-90, 92-94, 96].

[109]. Cotugno gave Dr. Moss no praise, credit, or acknowledgement on her 14 February 1992 Evaluation for developing and administering the Middle School Plan, which was disparate from the way he evaluated non-interracially married white male Directors. [E-10: ¶¶ 104-106].

[110]. The Middle School Program presided over by Arthur Cotugno and Claude Palczak was plagued by pervasive racial and ethnic hostility, discriminatory practices, etc. per SED Report on racism. [E-10: 107-112].

[111]. Arthur Cotugno admitted he was angered by the SED Report, which supported teaming being developed under my NYS Education Department Fund for Innovation Grant. [E-10: ¶¶ 116-121].

[112]. A full cycle of curriculum planning and writing occurred from July of a year through June of the next year

and was reflected in the Office of Instruction curriculum writing budget approved by the Superintendent and Board of Education, and Cotugno was aware of this.

[113]. There was no full cycle between 1 July 1991 — 14 February 1992 Evaluation period for Cotugno to evaluate Moss on, and Cotugno did not approve requested curriculum writing monies during this period in any case; it was Cotugno himself who cut Dr. Moss' Middle School curriculum writing budget to the lowest figure that it had ever been while she was Director of Instruction; Brown had always funded the full amount requested by Dr. Moss for curriculum writing. [E-10: 147-153, 154-165, 167-168, 166, 170-173].

MOTIVATION/RECOGNIZING EFFORTS OF OTHERS

[From 14 February 1992 Evaluation]

[115]. Cotugno acknowledged in the 2 March 1992 post-evaluation conference that Dr. Moss motivated and recognized people, but he refused to change the recommendation on the Evaluation so that it was accurate. In his Deposit-ion Mr. Cotugno admitted the he indeed had said that Dr. Moss motivated people and that he had known that she did. [E-13: ¶¶ 539-540]. [E-16: Cotugno Deposition: p. 213 (lines 10-20) & pp. 213 – 223]. [E-2: Brown Affidavit: ¶¶ 21-29]. [E-15: Moss Deposition: p. 324 (lines 14-22); p. 325 (lines 17-23), p. 327 (lines 5-12), p. 232 (lines 22-23), p. 233 (lines 6, 8, 12, 16, 21, 23); p. 234 (lines 11-13); pp. 235-237 (lines 1-4)].

[117]. Cotugno had received copies of thank you memos prior to his writing Dr. Moss' 14 February 1992 Evaluation and he knew that Dr. Moss wrote thank you notes and recognized others efforts: no reasonable person would understand that what the statement "need to approve ability to motivate and show appreciation of others" actually allegedly meant that Dr. Moss should write more thank you memos. [E-13: ¶¶ 540-547].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

[119]. In his 31 March 1992 RDDIR, Cotugno says that what he meant on his 14 February 1992 Evaluation by this accusation was that Dr. Moss scheduled meetings and did not appear for them. Dr. Moss did not fail to attend scheduled meetings and Cotugno did not specify or cite any dates or meetings that Dr. Moss did not show up for. [E-13: ¶¶ 548-549].

KNOWLEDGE OF CURRICULUM CONTENT
[From 14 February 1992 Evaluation]

[121]. Dr. Moss was commended by Supt. Brown for her curriculum knowledge and Cotugno knew this. [E-13: ¶¶ 339-340].

[122]. Dr. Moss established the GASD Elementary Curriculum Council. [E-13: ¶ 341].

[123]. GASD's first K-6 Course of Study for Science and K-6 Course of Study for Social Studies were written under Dr. Moss' administration, and Cotugno knew this. [E-13: ¶¶ 342-343].

[124]. Dr. Moss arranged for staff training and Cotugno knew this. He received memos from Dr. Moss from 1989-1992 describing training and participants. [E-13: ¶¶ 344-349].

[125]. Dr. Moss wrote the Full Day Kindergarten Report, which she presented several times to the Board of Education; Cotugno was present during these presentations and he knew. [E-13: ¶¶ 353, 354].

GIFTED AND TALENTED PROGRAM
[From 31 March RDDIR and 17 June 1992 termination letter (E-1: Exhibits "W" & "Z")]

[126]. The 14 February 1992 Evaluation of Moss does not mention the Gifted and Talented Program.

[127]. In his 31 March 1992 RDDIR to Human Rights Arthur Cotugno alleged that what he meant by the Evaluation recommendation on the 14 February Evaluation was that the Gifted and Talented Program had no goals and objectives and no evaluation plan; in his 17 June 1992 termination letter Mr. Cotugno alleged that there were "competencies" unaddressed with respect to the Gifted and Talented Program. [E-12: ¶¶ 71, 107-109].

[131]. As Superintendent, Cotugno signed two parts of the said 4-year evaluation and submitted them to the NYSED. And he knew full well that the Program was being evaluated. [E-12: ¶¶ 60-63, 91-93]. [E-17: Moss Supplemental Affidavit, ¶ 24 & Exhibit "I"].

[132]. Arthur Cotugno's 12 August 1992 letter to Dr. Moss insinuating but not actually stating that there were no goals, objectives, and evaluation plan for the program is factually false and was a retaliatory action by Cotugno brought on by Dr. Moss' insistence in a 25 July 1992 meeting that she (like male Director Limoncelli) be allowed to meet and interview Gifted and Talented teacher candidate Mary Beth Cotrupi before recommending her to the Board of Education. Mr. Cotugno admits that he did not have any reason to find fault with Dr. Moss job performance at the 25 July 1991 meeting. [E-12: ¶¶ 30-44]. [E-16: Cotugno Deposition: p. 134 (lines 5-8)].

[133]. Dr. Moss' feeling that for subordination and propriety's sake she should address the new Superintendent's professed concerns even though they had been shown to be groundless, she met with the elementary principals and subsequently with Mr. Cotugno and the two Gifted and Talented teachers on 13 September 1992 and the entire program was explained to Mr. Cotugno and the Gifted and Talented folders

---

APPENDIX NOTE: The correct year for ¶132 and ¶133 is 1991 [see p. A-99 *infra*, Cotugno admission 133].

once again reviewed with him; at the suggestion of Dr. Moss after having consulted with the principals Mr. Cotugno agreed that a new course of study would be written and an end-of-the-year evaluation report would be submitted and Cotugno indicated that he was satisfied with this solution that Dr. Moss had so diplomatically put forward. [E-12: ¶¶ 44-55]. [Cotugno Affidavit: Defendant GASD's Exhibit "I", ¶¶ 16-22]. [E-17: Moss Supplemental Affidavit, ¶¶ 39-43].

[135]. On a form of his own design Cotugno on 8 April 1992 requested "impact" information from Moss to assess the effect of cutting the Gifted and Talented Program, which Moss supplied the same day of the request. Other than this 8 April 1992 impact information Cotugno did not request any information, recommendation, or review about Gifted & Talented from Moss. In fact on the 14 February 1992 Evaluation Cotugno unambiguously states of Moss, you [Moss] have "provided whatever information has been asked of you in a prompt and orderly manner". [E-12: ¶¶ 72-80].

[136]. Laurence Trzaskos in the GASD Plan recommended that the new Course of Study that Dr. Moss and the Gifted and Talented staff had prepared be used as the Gift-ed and Talented Program in the future, and yet Trzaskos was hired as Elementary Director of Instruction even though he had recommended the very same course of study that Moss and the staff had developed. [E-12: ¶ 84].

ALTERNATIVE EDUCATION PROGRAM

[From 17 June 1992 termination letter (E-1: Exhibits "Z")]

[137]. As admitted by Mr. Cotugno, the Alternative Education Program co-created by Dr. Moss was a highly successful program that GASD expressly used as a model for future expanded Alternative Education Program. [E-11: ¶¶ 20, 71, 55, 94, 95-96]. [E-7: Exhibit "A", p. 53]. [E-16: Cotugno

Deposition: p. 147 (lines 7-10)]. [E-2: Brown Affidavit, ¶¶ 50-53].

[138]. Cotugno later took credit for the program and the GASD Board named an expanded version after him to which he responded that he was honored to have the program named after him. [E-11: ¶¶ 91-94].

[139]. Dr. Moss worked with High School Principal DeRose to co-create the Alternative Education Program for students who were not doing well in the ordinary school environment and who were at risk for dropping out of school. [E-11: ¶¶ 1-5, 12].

[140]. Cotugno and GASD Board members were present at 28 March 1990 Board meeting where Dr. Moss and Mr. DeRose presented the Alternative Education Program proposal, which was approved by the Board. [E-11: ¶ 2].

[141]. Dr. Moss was commended for her work with the Program, including that "without [her] it is unlikely the Board would have funded it." [E-11: ¶ 6].

[142]. The Alternative Education Program was the most frequently and intensely evaluated program in the school district and Dr. Moss personally participated in evaluation meetings along with the psychologist, social worker, guidance counselors, teachers, and high school assistant principal. [E-11: ¶¶ 7-20, 21-29, 36, 52].

[143]. All reports on the Alternative Education Program showed significant improvement in both attendance and academic achievement. [E-11: ¶¶ 8, 10, 15-16, 85-88].

[144]. On 8 April 1992 Cotugno gave Dr. Moss a form to provide specific information which Moss provided him on that very same day of 8 April. [E-11: ¶¶ 42-51].

[145]. Other than the 8 April 1992 information, Cotugno did not request (nor was Moss scheduled to provide) any information or evaluation or reports to Cotugno – the yearly report that was done was at Moss' discretion. [E-11: ¶¶ 57-68, 73-79, 96].

L.R. 7.1: ADMITTED RE TERMINATION REASONS

TIME OUT OF DISTRICT

[From 17 June 1992 termination letter (E-1: Exhibits "Z")]

[146]. All time spent away from the district attending meetings and/or conferences was approved by Brown (October 1989 - 30 June 1991) and Cotugno (1 July 1991 - 30 June 1992). [E-9: ¶¶ 1-2 & 5-6]. [E-15: Moss Deposition: p. 365].

[147]. All attendance at meetings and/or conferences was charged to the Office of Instruction curriculum development budget account # 20104001.04 and approved by the GASD Superintendent. [E-9: ¶¶ 7-10]. [E-15: Moss Deposition: p. 366 (lines 5-10)].

[149]. The figure given by Arthur Cotugno that Dr. Moss spent 75 days at non-district related functions and conferences is conspicuously factually false. [E-9: ¶ 2 and ¶ 124]. [E-15: Moss Deposition: p. 365, (lines 11-23), p. 366 (lines 1-4)].

[150]. For the 1991-1992 school year Dr. Moss' time spent at meetings and conferences away from the district averages to 8 tenths of a day per month. [E-9: ¶ 127]. [E-15: Moss Deposition: p. 366 (lines 18-23), p. 367 (lines 1-5)].

[151]. At the end of the 1992 school Dr. Moss had a cumulative total of 6.5 days of unused vacation time. [E-9: ¶¶ 125-126].

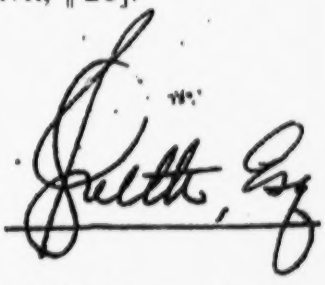
Plaintiff's Additional Material Facts As
To Which There Is A Genuine Issue

(1). The composition of the Board of Education that terminated Plaintiff in 1992 was not the same as the Board of Education that hired her in 1990, and moreover not all Board members who voted to terminate Plaintiff in 1992 who were present in 1990 voted to hire her in 1990. In fact, out of a nine

member Board only three Board members who voted to terminate Plaintiff in 1992 [Otto Miller, Decker, & DeRossi] also voted to terminate her in 1992. Board members who had dis-played either race-based or retaliatory bias that did not vote for Plaintiff in 1989, but voted against her in 1992 were John Miller, Frank Persico, & Charles Ferris. The only female and the only Hispanic on the Board did not attend the 1992 Board meeting and did not vote for Dr. Moss' termination — thus
the vote against Dr. Moss was not unanimous as Defendant Cotugno mendaciously alleges. [E-17: Moss Supplemental Affidavit: ¶25].

(2). Laurence Trzaskos occupied the Director of Instruction's office that had been occupied by both plaintiff Moss and her predecessor Dr. Wyszomirski and which was located in the space adjacent to and facing the Superintendent's office while Jan Dyer occupied what was described to her as a small "tubby hole" office at the end of the Central Office building. [E47: Moss, Supplemental Affidavit, ¶ 2].

(4). Each GASD Board member had first hand knowledge of and were capable of making an independent judgment regarding both Dr. Moss' job performance and Cotugno's criticisms on his 14 February 1992 Evaluation of her and his 17 June 1992 termination recommendation notice letter as documented in Moss Supplemental Affidavit, ¶¶ 27-35. [E-17: Moss Supplemental Affidavit, ¶ 26].



Ralph Cognetti, Esq.

GASD'S L.R. 7.1 ADMISSIONS
District Docket No. 435

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS,

Plaintiff

against

RESPONSE TO PLAINTIFF'S RULE 7.1(a)(3) STATEMENT
Civil Action No. 95-CV-1356

(LEK/RFT)

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, THE BOARD OF EDUCATION OF THE GREATER AMSTERDAM SCHOOL DISTRICT, ARTHUR P. COTUGNO, CLAIRE LUDWIN, MICHAEL DECKER,DANIEL DE ROSSI, CHARLES FERRIS, MARK A. MILLER, AS VOLUNTARY ADMINISTRATOR OF THE ESTATE OF JOHN MILLER, DECEASED, FRANK PERSICO, EMANUEL ROSEN, RONALD LIMONCELLI, NEW YORK STATE DIVISION OF HUMAN RIGHTS, PAULA SAWYER, KEVIN LYNCH, and JAMES BUSCHIN, in both their official and personal capacities,

Defendants.

Defendants, The Enlarged City School District of the City of Amsterdam, the Board of Education of the Greater Amsterdam School District, and the individual Board of Education members (hereinafter referred to as the "GASD"), and Ronald Limoncelli, by and through their attorneys, Ryan & Smallacombe, PLLC, as and for a response to the plaintiff's Statement of Additional Material Facts contained within plaintiff's Local Rule 7.1(a)(3) Statement, set forth the following:

RESPONSE TO STATEMENTS SET FORTH IN PARAGRAPH 17:

1. Admitted.

2. Admitted.

4. Admitted.

5. Defendants admit plaintiff was eligible for tenure consideration at the end of her probationary period of employment. (Ex. 'K").

6. Defendants admit plaintiff received an evaluation on August 2, 1990 and denies the remaining statements and characterizations, since the evaluation speaks for itself.

14. Admitted.

15. Admit that plaintiff sent a memo on June 5, 1990, and deny plaintiff's characterizations of the memo, since the memo speaks for itself.

16. Admit a memo was sent to Mr. Cotugno on March 15, 1990 and deny plaintiff's characterization of the memo, since the memo speaks for itself.

18. Defendants admit plaintiff received an annual evaluation from Superintendent Brown, but deny the characterizations of the evaluation, since the document speaks for itself.

20. Admitted.

23. Admitted. (Cotugno reply affidavit, ¶12).

24. Admit Mr. Ferris made the quoted statement to the newspaper, deny plaintiff's characterizations of the statement, since the statement speaks for itself. Defendants further deny the statement has any relevance to plaintiff's claim, since plaintiff is not Hispanic. (Ex. "A", ¶4).

30. Defendants admit the quoted remarks were printed in the Schenectady Gazette, and deny any relevance to plaintiff's claim, or the pending motion, as the alleged

remarks were made more than one year after plaintiff's employment with GASD ended.

31. Defendants admit Mr. Ferris resigned from the Board, admit he was appointed to the GASD Finance Committee, and deny the characterizations contained in the statement, as well as the relevance of the resignation which occurred more than one year after plaintiff's employment ended.

33. Defendants admit , there were many communications between GASD and NYSED, admit a two-day investigation occurred in November of 1991, and deny the remainder of the characterizations of the State Education Department purpose in evaluating the GASD. Defendants note that the citations to the Seavey affidavit, as well as plaintiff's interrogatory answers, have no relevance or useful information regarding the purpose of the SED investigation.

39. Admitted.

42. Admitted.

45. Admitted.

49. Admit that Principal DeRose was quoted in the newspapers, but note that the newspaper article speaks for itself.

53. Defendants admit Mr. Cotugno asked plaintiff to provide documents relating to diversity and multi-cultural activities within the GASD, and deny the remainder of the statements and characterizations, or that the purpose of the assignment was to give any particular impression to the SED. (Cotugno reply affidavit, ¶15).

60. Defendants admit Mr. Cotugno withdrew his resignation and became permanent superintendent of the GASD, and deny the remainder of the characterizations and statements. (Cotugno reply affidavit, ¶27).

GASD'S L.R. 7.1 ADMISSIONS

61. Defendants admit the cited memo was sent by plaintiff, and are unable to admit or deny the characterizations of Mrs. Gage's dealings, and further note that the November 6, 1991 memo speaks for itself. Defendants deny Mr. Cotugno treated Ms. Gage unfairly (Cotugno reply affidavit, ¶30).

68. Defendants admit the job vacancy notice was forwarded to plaintiff, but deny any discriminatory or retaliatory motivation on the part of Mr. Cotugno (Cotugno reply affidavit, ¶24).

69. Deny plaintiff's characterizations of the SED report, since the report speaks for itself.

77. Defendants admit that the Amsterdam Recorder newspaper printed the quoted material, and deny the substance of the quote. (Cotugno reply affidavit, ¶20)

78. Admitted.

80. Defendants admit Mr. Cotugno prepared the February 14, 1992 evaluation of plaintiff, and submit that the evaluation speaks for itself. Defendants deny plaintiff's characterizations of the evaluation, and deny negative angry public statements were made by defendants. (Cotugno reply affidavit, ¶20).

82. Admitted, but deny the evaluation was sent four days prior to the February 28, 1992 administrators' meeting. (Cotugno reply affidavit, ¶¶ 120-26).

84. Defendants admit Mr. Cotugno made the statements generally, but are unable to admit or deny the precise quoted language.

85. Admitted.

87. Admitted.

88. Admitted.

90. Defendants admit the dates set forth in paragraph 90, but deny that Mr. Cotugno gave non-sensible incoherent reasons for his decision to leave. (Cotugno reply affidavit, ¶27).

GASD'S L.R. 7.1 ADMISSIONS

95. Admitted, but deny the comments have any relevance to plaintiff's claim.

98. Defendants admit the District's response was publicly released on April 22, 1992, but deny the remainder of the allegations. (Cotugno reply affidavit, ¶¶ 6-7, 9; Limoncelli reply affidavit ¶¶ 4-5; Moss deposition, pp. 164, 166).

101. Admitted.

102. Admitted.

106. Defendants are unable to admit or deny what was printed in the Recorder newspaper or that hearsay contained in a newspaper article is relevant to this motion. Defendants submit that the article speaks for itself. Plaintiff's contract was not renewed nine days later. (Cotugno supporting affidavit, ¶¶ 36-44).

107. Defendants admit that Mr. Cotugno withdrew his resignation one week before he recommended that the plaintiff's contract not be renewed, but deny that his reasons were inconsistent with published facts and his own prior statements. (Cotugno reply affidavit ¶27).

108. Admitted.

109. Admitted.

111. Defendants admit that the listed individuals were not terminated and were granted tenure by the GASD, and deny the remainder of the allegations, as well as plaintiff's characterizations. (Cotugno supporting affidavit, Ex. "I", ¶¶ 39-40, 49-50).

113. Defendants admit that the job requirements for the two new director positions were modified, but deny that these modifications eliminated highly qualified candidates. (Cotugno reply affidavit, ¶34).

114. Admitted, to the extent defendants have knowledge regarding prior employment decisions.

GASD'S L.R. 7.1 ADMISSIONS RE TERMINATION

115. Admitted, to the extent defendant have knowledge regarding employment decisions

REPLY TO STATEMENT OF FACTS SET FORTH IN PARAGRAPH 55 OF PLAINTIFF'S RULE 7.1(a)(3) STATEMENT (1-153):

1. Defendants admit that the response to the Division of Human Rights complaint sets forth the District's explanation, but notes that Mr. Cotugno provided his own explanation of his evaluation of plaintiff in the affidavit submitted in support of the pending motion, as well as his deposition testimony. (Cotugno supporting affidavit; Cotugno reply affidavit; Ex. "H").

3. Admitted.

7. Admitted.

11. Defendants deny that the March 31, 1992 response to the Division of Human Rights complaint is false, but admit that the evaluation of the plaintiff was not based on Mr. Sharifi's input.

12. Admitted.

13. Admitted.

14. Defendants admit that Mr. Cotugno never wrote the plaintiff a letter of reprimand regarding Mr. Sharifi. Defendants deny that plaintiff's behavior and comportment towards Mr. Sharifi was friendly, fair, professional and appropriate. (Ex. "C", response 32(5); Ex. "D", ¶32).

15. Admitted.

17. Defendants admit there is no sworn affidavit from Abdel Sharifi, and deny the remainder of the allegations. (Cotugno supporting affidavit; Cotugno reply affidavit ¶28).

18. Defendants deny the March 31, 1992 response to plaintiff's Division of Human Rights complaint was false and mendacious, and acknowledge that Paul Dimascio did not provide any input regarding plaintiff's February 14, 1992 evaluation.

GASD'S L.R. 7.1 ADMISSIONS RE TERMINATION

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

24. Admitted.

25. Defendants admit there is no sworn affidavit from Mr. Dimascio, and deny the remainder of the allegations. (Ex. "D", ¶32; written response of Paul Dimascio, included in attached #6 to Ex. "C")

32. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

39. Admitted.

41. Admitted.

42. Admitted.

43. Defendants deny that Mr. Jankunas and plaintiff had a positive professional relationship. Defendants admit the remainder of the allegations in 43. (Cotugno May, 2000 interrogatory response, ¶32(1); Cotugno reply affidavit ¶28).

45. Defendants deny Mr. Cotugno mentions Joanne Spagnola for the first time in his May 10, 2000 answers to plaintiff's interrogatories, but admit that the May, 2000 interrogatory answers are the first time Mr. Cotugno mentions Ms. Spagnola in the context of this action.

50. Admitted.

51. Defendants admit that the first mention of Ms. Dyer in the context of this litigation occurred at that time.

53. Admitted.

54. Admitted.

55. Admitted.

56. Defendants admit that the first mention of Mr. Murdoch within the context of this litigation occurred at that time.

58. Admitted.

61. Admitted.

63. Defendants admit that plaintiff served on the Health Advisory Council and submit that the referenced letter speaks for itself.

67. Admitted.

73. Defendants admit that the first mention of Ms. Ruf within the context of this litigation occurred at that time.

74. Defendants deny that plaintiff never disciplined or degraded Ms. Ruf. (Cotugno May, 2000 interrogatory responses, ¶32(11)). Defendants admit the remainder of the allegations in paragraph 74.

75. Defendants admit the statement, but deny any relevance to this litigation, or the pending motion.

77. Admitted.

78. Admitted.

84. Defendants deny the evaluations completed by plaintiff were "fair", and admit that no person evaluated by plaintiff ever filed a formal grievance against her indicating otherwise. (Ex. "C", ¶32).

85. Admitted.

88. Admitted.

89. Admitted.

90. Admitted.

96. Admitted.

98. Admitted.

100. Admitted.

102. Admitted.

103. Admitted.

104. Admitted.

105. Defendants admit that former superintendent Brown commended plaintiff for her Middle School planning and submit that the referenced letter speaks for itself.

106. Defendants admit that the referenced meetings took place and that Mr. Cotugno set up the agendas, but deny

that Mr. Cotugno never indicated problems with the Middle School planning. (Cotugno supporting affidavit, Ex. "H""; Ex. "L", Ex. "R").

107. Admitted.

108. Admitted.

109. Defendants admit that the February 14, 1992 evaluation of plaintiff does not commend plaintiff for developing and administering the Middle School plan, but deny that this was disparate from the way Mr. Cotugno evaluated non-interracially married or male directors. (Cotugno supporting affidavit, Ex. "I", ¶¶26, 32, 49-50; Ex. "D", ¶32).

111. Defendants admit Mr. Cotugno was angered by some parts of the SED report and deny plaintiffs characterizations of the SED report, which speaks for itself. (Cotugno reply affidavit, ¶20).

112. Admitted.

113. Admitted. Defendants submit that the Superintendent had every right to approve or amend budget requests, and further submit that approvals by former Superintendent Brown of plaintiff's budget requests for curriculum writing, or any other request of plaintiff, has no bearing on this litigation, or the pending motion for summary judgment. (Cotugno reply affidavit, ¶22).

115. Defendants deny the recommendation was inaccurate, or needed to be changed in order to become accurate. Mr. Cotugno's evaluation of the plaintiff stated her ability to motivate others and recognize their efforts needed to be improved, not that it was completely lacking. (Ex. "L").

119. Mr. Cotugno was not required to specify or cite any dates or meetings that plaintiff did not show up for, since it was within his authority as Superintendent of Schools

to prepare evaluations of plaintiff as he saw fit, and to recommend that her probationary contract of employment not be renewed based on the performance deficiencies outlined. Defendants reaffirm Mr. Cotugno's prior statements in this regard.

121. Admitted, although former Superintendent Brown's opinion of plaintiff's curriculum knowledge has no bearing on Mr. Cotugno's subsequent performance evaluation of plaintiff, the decision not to renew her contract or the pending motion.

122. Admitted.

123. Admitted.

124. Admitted.

125. Admitted.

126. Admitted.

127. Admitted.

131. Defendants admit Mr. Cotugno signed two parts of the four-year evaluation, but deny the remainder. (Ex. "I", ¶17).

132. Denied, as plaintiff no longer was employed by the GASD in July or August of 1992. To the extent the dates set forth in paragraph 132 are inaccurate, defendants admit that Mr. Cotugno did not have any reason to find fault with plaintiff's job performance during the July 25, 1991 meeting but deny the remainder of the statement. (Ex. "I", ¶48; Cotugno reply affidavit, ¶11).

133. Defendants are unable to comment on plaintiff's feeling or motivations for her actions. Defendants admit that a meeting took place in September of 1991 and that plaintiff agreed to write a new course of study and submit an end of the year report. Defendants deny plaintiff's characterizations of her conduct.

136. Admitted.

137. Admitted.

GASD'S L.R. 7.1 ADMISSIONS RE TERMINATION

138. Admitted.

139. Admitted.

140. Admitted.

141. Defendants admit that Mr. Brown made that comment about plaintiff in her August 2, 1990 evaluation.

142. Admitted.

143. Admitted.

144. Admitted.

145. Admitted.

146 Admitted.

147. Admitted.

149. Defendants deny plaintiff's characterization of Mr. Cotugno's comments, and state that plaintiff spent all or part of 24 days at conferences or meetings away from the School District during the 1991-92 school year. (Cotugno reply affidavit, ¶40).

REPLY TO STATEMENT OF FACTS SET FORTH IN PARAGRAPH 94 OF PLAINTIFF'S RULE 7.1(a)(3) STATEMENT:

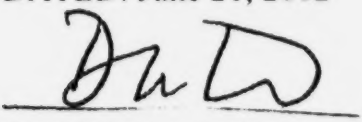
1. Defendants deny any board members displayed race-based or retaliatory bias with respect to plaintiff, deny plaintiff's characterizations of Mr. Cotugno's allegations and otherwise admit the statements contained in paragraph 1. The board's decision to accept Mr. Cotugno's recommendation that plaintiff's probationary contract not be renewed was based on the performance deficiencies outlined by Mr. Cotugno, rather than any race-based or retaliatory bias. (Ex. "I", ¶ 26, 28-30, 36, 37, 44; Cotugno reply affidavit, ¶ 28; Ex. "L"; Ex. "R"; Ex. "D", par. 32; Ex. "G", pp. 261-262).

GASD'S L.R. 7.1 ADMISSIONS RE TERMINATION

2. Defendants admit Laurence Trzaskow occupied the office that had previously been occupied by plaintiff during her probationary employment in the GASD. Defendants deny the remainder of the allegations. (Cotugno reply affidavit, ¶36).

4. Defendants admit GASD board members had some first-hand knowledge regarding plaintiff's job performance and Superintendent Cotugno's criticism of her job performance, nevertheless, the board relied upon Mr. Cotugno's recommendation not to renew plaintiff's probation-ary contract. (Ex. "D", ¶32; Ex. "G", p. 261-262; Ex. "I", ¶44).

DATED: June 21, 2002



David T. Luntz, Esq.
Federal Bar Roll No.: 301947
RYAN & SMALLACOMBE, PLLC Attorneys for Greater Amsterdam School District Defendants
102 Hackett Boulevard
Albany, New York 12209
(518) 449-5501

TO: Mevec & Cognetti Attorney for Plaintiff
204 E. Jefferson Street Syracuse, NY 13202

Derek L. Hayden, Esq.
Horigan, Horigan & Lombardo, P.C.
Attorney for Arthur Cotugno
49 East Main Street
PO Box 520
Amsterdam, New York 12010
42.2135/rule0602.doc

COTUGNO'S L.R. 7.1 ADMISSIONS
[District Docket No.419]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS,

Plaintiff,

-against-

RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS

95-CV-1356
(LEK/RFT)

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, et al.,

Defendants.

Defendant Arthur P. Cotugno, pursuant to L.R. 7.1(a)(3), submits the following response to the plaintiff's statement of material facts as to which he contends there is a genuine issue:

FOR THE NINTH PARAGRAPH OF THE PLAINTIFF'S 7.I(a)(3) STATEMENT

1. Admitted.
2. Admitted.
4. Admitted,
5. Admitted.
7. Admitted.
14. Admitted.
20. Admitted.
22. Admitted.
23. Admitted.
24. Admitted

25. Admitted.

26. Admitted.

27. Admitted.

32. Admitted.

33. Admitted.

35. The defendant denies that the plaintiff brought the ESL matter to a successful conclusion. (Cotugno reply affidavit, paragraph 21

41. Admitted.

42. Admitted.

45. Admitted.

49. The newspaper article speaks for itself.

50. Admitted.

51. Admitted.

53. The defendant denies that the purpose of this assignment was to give any impression to the SED (Cotugno reply affidavit, paragraph 15).

54. The newspaper article speaks for itself.

61. The memo speaks for itself.

67. Admitted.

68. Admitted.

69. The report speaks for itself.

75. The letter speaks for itself.

76. The Board of Education minutes and newspaper articles speak for themselves. The defendant denies any retaliatory threats against a female principal (Cotugno reply affidavit, paragraph 19).

77. Admitted.

78. Admitted.

80. The evaluation speaks for itself. The defendant objects to the plaintiff's characterization of the tone ("negative") and timing ("in the midst of a bitter racial controversy") of the evaluation. The defendant denies that his negative statements

were public (Cotugno reply affidavit, paragraph 20).

82. Admitted, except that the evaluation was sent to the plaintiff on February 14, 1992 (Cotugno reply affidavit, paragraph 26).

84. The defendant admits making these statements in general, but cannot recall the exact words used.

85. Admitted.

87. Admitted.

88. Admitted.

90. The defendant denies that he gave nonsensical and incoherent reasons for leaving (Cotugno reply affidavit, paragraph 27).

95. Admitted.

98. The defendant admits that the school district's response was publicly released on April 22, 1992, but denies the remainder of the statement (Cotugno reply affidavit, paragraphs 6-7).

99. The newspaper articles speak for themselves.

100. The Board of Education minutes speak for themselves.

101. Admitted.

102. Admitted.

106. The newspaper article speaks for itself. The defendant's contract was not renewed nine days later. (Cotugno supporting affidavit, paragraphs 36, 44).

107. The defendant admits that he withdrew his resignation one week before he recommended that the plaintiff's contract not be renewed, but denies that his reasons were inconsistent with published facts and his own prior statements (Cotugno reply affidavit, paragraph 27).

108. Admitted.

109. Admitted.

113. The defendant admits that some of the job requirements for the two new director positions were modified, but denies that these changes eliminated any highly

qualified candidates (Cotugno reply affidavit, paragraph 34).

114. The defendant admits this statement up until June 30, 1995, and between September 22, 1997 to January 22, 1998 when he was employed at the GASD. The defendant lacks any knowledge to admit or deny this statement between June 30, 1995 and September 22, 1997, and beyond January 22, 1998.

115. The defendant admits this statement up until June 30, 1995, and between September 22, 1997 to January 22, 1998 when he was employed at the GASD. The defendant lacks any knowledge to admit or deny this statement between June 30, 1995 and September 22, 1997, and beyond January 22, 1998.

FOR THE FIFTEENTH PARAGRAPH OF THE PLAINTIFF'S 7.1(a)(3) STATEMENT

1. Admitted.

3. Admitted.

4. Admitted.

7. Admitted, but the newspaper articles speak for themselves.

8. Admitted.

11. The defendant admits that his evaluation of the plaintiff was not based on Mr. Shari 's input.

12. Admitted.

13. Admitted.

14. The defendant admits that he never wrote the plaintiff a letter of reprimand regarding Mr Sharifi. The defendant denies that the plaintiff's behavior and comportment toward Mr. Sharifi was friendly, fair, professional and appropriate (Hayden reply affidavit, Exhibit "B", response 32(5)).

15. Admitted.

COTUGNO'S L.R. 7.1 ADMISSIONS RE TERMINATION

17. The defendant admits that he has not obtained an affidavit from Mr. Sharifi.

18. The defendant admits that his evaluation of the plaintiff was not based on John DiMascio's input.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

24. Admitted.

25. The defendant admits that he has not obtained an affidavit from Mr. DiMascio.

27. Admitted.

28. Admitted.

29. Admitted.

30. The defendant admits that the incidents referred to in Dr. Steubing's letter occurred prior to Mr. Cotugno's superintendency, and lacks any knowledge as to whether they involved legitimate disciplinary action. Dr. Steubing's note speaks for itself.

31. The defendant admits that the May 1992 memo was a typical communication school district. The April 1992 memo speaks for itself

32. Admitted.

35. Admitted.

36. Admitted.

37. Admitted.

38. The defendant admits that the June 17, 1990 memo from the plaintiff to Ms. Zucker was benign. Ms. Zucker's June 19, 1990 reply memo speaks for itself.

39. Admitted.

41. Admitted.

42. Admitted.

43. The defendant denies that Mr. Jankunas and

---

*Note: The name in 18 should be Paul DiMascio, not John DiMascio

the plaintiff had a positive professional relationship (Hayden reply affidavit, Exhibit "B", response 32(1)). The defendant admits the remainder of the statement.

45. The defendant. admits that the first mention of Ms. Spagnola within the context of this action occurred at that time.

46. Admitted.

48. Admitted.

49. Admitted.

50. Admitted.

51. The defendant admits that the first mention of Ms. Dyer within the context of this action occurred at that time.

52. Admitted.

53. Admitted.

54. Admitted.

55. Admitted.

56. The defendant admits that the first mention of Mr. Murdoch within the context of this action occurred at that time.

58. Admitted.

60. Admitted.

61. Admitted.

62. The defendant denies that teachers wrote curriculum. Department chairpersons or coordinators wrote curriculum with the assistance of the director of instruction and teachers (Cotugno EBT, pages 175-177). The defendant admits the rest of the statement.

63. The defendant admits that the plaintiff served on the Health Advisory Council. Mr. Limoncelli's letter speaks for itself.

64. Admitted.

65. The defendant admits that, in Mr. Brown's opinion, the plaintiff motivated employees, union officials, board members and committees. However, Mr. Cotugno had a different opinion of the plaintiff. Cotugno supporting affidavit, Exhibit H).

67. Admitted.

COTUGNO'S L.R. 7.1 ADMISSIONS RE TERMINATION

68. The defendant admits that Ms. Ruf alleged that Mr. Limoncelli made inconsistent statements under oath. Mr. Limoncelli's credibility is for a jury's determination.

69. The defendant admits that the first mention of Mr. Giovanni within the context of this action occurred at that time.

70. Admitted.

73. The defendant admits that the first mention of Ms. Ruf within the context of this action occurred at that time.

74. The defendant denies that the plaintiff never disciplined or degraded Ms. Ruf (Hayden reply affidavit, Exhibit "B", response 32(11)). The defendant admits the remainder of the statement.

75. Admitted.

76. The defendant admits that the first mention of Mr. Caruso within the context of this action occurred at that time.

77. Admitted.

78. Admitted.

81. Admitted.

84. The defendant admits that no male or female ever filed a grievance against the plaintiff regarding her evaluations, but objects to the plaintiff's characterization of the evaluation as "fair".

85. Admitted.

88. Admitted.

89. Admitted.

90. Admitted.

91. Admitted.

92. Admitted.

93. Admitted.

96. Admitted.

98. Admitted.

99. The defendant denies that the plaintiff was an expert in curriculum development, but admits that she helped establish the specified courses of study (Hayden reply affidavit, Exhibits "B" and "D"; Cotugno supporting affidavit, Exhibit "H").

100. Admitted.

102. Admitted.

103. Admitted.

104. Admitted.

105. The defendant admits that Mr. Brown commended the plaintiff for Middle School planning, but cannot say what the Board of Education knew or should have known. Ms. Donohue's letter speaks for itself.

106. The defendant admits that meetings took place and that he set up the agendas, but denies that he [n]ever indicated problems with the Middle School planning (Cotugno supporting affidavit, Exhibit "H").

107. Admitted.

108. Admitted.

109. The defendant admits that he did not state on his evaluation that the plaintiff developed and administered the Middle School plan, but denies that this was disparate from the way which he evaluated non-interracially or male directors (Cotugno supporting affidavit, paragraphs 26, 32, 49-50).

110. The defendant objects to the plaintiff's characterizations. The SED report speaks for itself.

111. The defendant admits that he was angered by some parts of the SED report (Cotugno reply affidavit, paragraph 20).

112. Admitted.

113. Admitted.

COTUGNO'S L.R. 7.1 ADMISSIONS RE TERMINATION

115. The defendant's evaluation of the plaintiff stated that her ability to motivate others and to recognize their
efforts needed to be improved, not that it was completely lacking (Cotugno supporting affidavit, Exhibit "H").

117. The defendant admits that he had received copies of some thank you memos prior to his evaluation. The defendant believes that a reasonable person would understand that writing more thank you memos would be one way to motivate and appreciate others.

119. Admitted.

121. Admitted.

122. Admitted.

123. Admitted.

124. Admitted.

125. Admitted.

126. Admitted.

127. Admitted.

131. The defendant admits that he signed two parts of the four-year evaluation, but denies the remainder (Cotugno supporting affidavit, paragraph 17).

132. The defendant admits that he did not have any reason to find fault with the plaintiff's job performance at the July 25, 1991 meeting, but denies the remainder of the statement (Cotugno supporting affidavit, paragraph 48).

133. The defendant was unaware of the plaintiff's motivation for addressing Mr. Cotugno's concerns, but admits that a meeting took place in September 1991 and that the plaintiff agreed to write a new course of study and submit an end-of-the-year report.

135. The defendant admits that he did not seek any additional information about the Gifted and Talented program after his initial inquiries.

136. Admitted.

137. Admitted.

138. Admitted.

139. Admitted.

140. Admitted.

141. The defendant admits that Mr. Brown stated this on her August 2, 1990 evaluation.

142. Admitted.

143. Admitted.

144. Admitted.

145. Admitted.

146. Admitted.

147. Admitted.

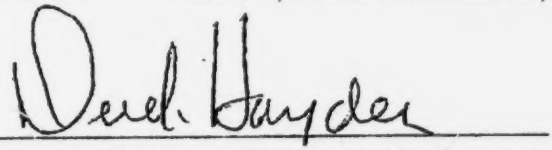
149. By the defendant's calculations, the plaintiff spent all or part of 24 days at conferences or meetings away from the school district during the 1991-1992 school year (Cotugno reply affidavit, paragraph 40).

150. By the defendant's calculations, the plaintiff spent an average of 2.4 days per month at conferences or meetings away from the school district during the 1991-1992 school year (Cotugno reply affidavit, paragraph 40).

151. Even if true, this is not a material fact.

152. The defendant did not commend the plaintiff for her time spent away from the district (Cotugno reply affidavit, paragraph 40).

DATED: June 14, 2002. Amsterdam, New York.



By: DEREK L. HAYDEN, ESQ. Bar Code No.: 509266

COTUGNO'S L.R. 7.1 ADMISSIONS RE TERMINATION

HORIGAN, HORIGAN, LOMBARDO & KELLY, P.C.
Attorneys for Defendant, Arthur P. Cotugno
49 East Main Street
P.O. Box 520
Amsterdam, New York 12010
Phone: (518) 843-0043
Fax: (518) 843-0339

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT
District Docket No.346

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Civil Action No.
95-CV-1356
(LEK)(RWS)

DONNA JEANNE MOSS,
Plaintiff

against

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, et al
Defendants

MOSS AFFIDAVIT
RE.
FREQUENTLY CITED DOCUMENTS

I, Donna J. Moss, being duly sworn, state and depose as follows:

1. A true copy of the following documents are annexed and marked Exhibits "A" - "2N", as indicated in paragraphs 2-41 below.

* * *

Donna J. Moss, Ph.D.

Sworn before me on this
19th day of
April 2001

Notary Public
ANNA P GOODWIN-GREMER
Notary Public, State of New York
Reg. #01GO5025241/Qualified in Ulster County
Commission Expires March 21, 2002

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

The University of the State of New York

The State Education Department
Public School Teacher Certificate

This certificate, valid for service in the public schools, is granted to the person named below who has satisfied the requirements prescribed by the State Education Department.

DONNA JEANNE MOSS
R.D. #2, WATERVALE ROAD
MANLIUS, NEW YORK 13104

Form: **PERMANENT**

Certification number: 068400281

Cerification area : SCHOOL ADMINISTRATOR AND SUPERVISOR AND SCHOOL DISTRICT ADMINISTRATOR

Effective date: September 1, 1971
Given under the authority of the State Education Department

Vincent C Gazzetta

Director, Division of Teacher Education and Certification

Thomas M Andrade

Commissioner of Education

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
Staff Personnel Service Unit

PLEASE POST PLEASE POST

August 3, 1989

INTERIM POSITION - 1989-90 –
1 YEAR APPOINTMENT

IMMEDIATE VACANCY
DIRECTOR OF INSTRUCTION

REQUIRED QUALIFICATIONS:

- Shall hold a Masters Degree with studies in Administration, Supervision, curriculum and Instruction - Doctorate desirable.
- Shall hold a New York State permanent certification as a School District Administrator (SDA).
- Have leadership experience in curriculum development and building administration.

DESIRABLE QUALIFICATIONS:

-Central Office administrative experience is desirable.

* * *

Arthur P. Cotugno, Director
Staff Personnel Service Unit

Arthur P. Cotugno

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

February 21, 1990

7.e. Motion by M. DECKER

RESOLVED: That the Board of Education authorize the Superintendent of Schools to implement the employment agreement between the Board and Dr. Donna J. Moss for the period July 1, 1990 through June 30, 1992 and that her salary for 1990-91 be $59,180 and for 1991-92 be $63,654.

Roll Call: 5 YES (R.Carpenter, M.Decker, D.DeRossi, O.Miller, C. Murillo)

3 NO (S.Donohue, C. Ludwin, J. Miller)

GREATER AMSTERDAM SCHOOL DISTRICT
DISTRICT REVIEW REPORT
NEW YORK STATE EDUCATION DEPARTMENT
JANUARY 1992

* * *

Report page II

[...] The lack of sensitivity on the part of some board members represents a serious barrier to improving education and communication in the District and intolerance of racial and cultural differences. Many board members also lack a basic understanding of students needs in general, and Hispanic students in particular. The combination of these two factors has set a negative tone in the District that permeates every level of the school community.

* * *

The findings indicate generally that severe problems exist related to the lack of understanding of and sensitivity to persons from different racial/ethnic, cultural and socio-economic backgrounds. These problems exist in the school district and in the community at large.

Report page 4

Recommendations:

[...] These activities should address topics such as: sensitizing staff and board members to racial and ethnic diversity; developing strategies to increase student self-esteem; developing strategies for improving community-school relations; and improving educational opportunities for all students.

* * *

• The District should develop and implement a program of intercultural learning and awareness for all staff, students, parents, and members of the Board of Education. Cultural awareness programs and activities may help all parties to improve their level of understanding and sensitivity to the various racial/ethnic differences in the Amsterdam community. Such programs also may help reduce the level of tension that currently exists.

In developing such a program, the District should take into account that there are different opinions about race relations in the schools, and tailor its efforts to address the different levels of understanding and sensitivity among the various parties. The primary goal of the program should be to create an educational environment that promotes understanding and respect for differences.

* * *

• Implement a program designed to recruit and hire minority staff, particularly Hispanics, at every level. Where possible, staff should be bicultural and bilingual. The District should consult a variety of minority professional and community service organizations at the local, State, and national levels to assist in the recruitment of minority staff.

Report page 5

EDUCATIONAL PROGRAMS AND SERVICES

Findings:

* * *

• The total number of students dropping out of high school was 61 in 1988-89; 70 in 1989-90; and 60 in 1990-91. Of the total number of dropouts, Hispanic students represented 27.9 percent, 24.3 percent; and 21.7 percent respectively during these same years. Although the total

number and percentage of dropouts, including Hispanic students, appears to be on the decline, the percentage of Hispanic students who dropout is still disproportionately higher than that for white students.

* * *

• Hispanic students appear to be overrepresented in special education. For example, 60 of the 260 students identified as in need of special education services are Hispanic. Although the percentage of Hispanic students in the District is only 16 percent, they represent 26.1 percent of the special education population.

* * *

Report page 6

• Test results were used inappropriately to exit some limited English proficient (LEP) students from the English as a Second Language (ESL) program.

• Standardized test results in the elementary school indicated that many Hispanic students did well in the area of mathematics, but have difficulties with their English language skills. These difficulties appear to have contributed to a disproportionate number of Hispanic students being placed in lower level core subjects. In addition, a group of students also had been exempted from ESL services based on an inappropriate interpretation of test results.

• Minority students were noticeably absent in honors and Regents level courses, while being over-represented in lower level courses at the middle school and high school. Tracking of minority students in lower level courses appears to be the result of lower expectations for minority students held by some teachers and guidance counselors.

* * *

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

[...] Parents and students stated that a particular guidance counselor at the high school made derogatory statements to students about their race, ethnicity, socio-economic status, and academic abilities.

The middle school staff have been studying the concept of team teaching for two years, but have not piloted this approach in the school. [....]

* * *

Report page 7

Recommendations:

* * *

District administration should analyze the placement of all students in special education programs to determine whether each placement is appropriate. For example, if it is found that a placement is based on limited English proficiency, it is inappropriate and in violation of State regulation. Such students should be placed in an appropriate bilingual or ESL class.

* * *

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
Staff Personnel Services Unit
GENERAL EVALUATION STATEMENT

TO: DR. DONNA MOSS RE: GENERAL EVALUATION

FROM: ARTHUR COTUGNO (Administrator)

DATE: FEBRUARY 14, 1992

You have had to make adjustments due to the change in leadership and supervision and these factors have been considered in assessing your performance over the past eight months.

Commendations

- You have worked diligently in attempting to deal with your responsibilities.

- You have provided whatever information has been requested of you in a prompt and orderly manner.

- You attempt to keep abreast of what is occurring throughout the District.

- You have established and coordinated several committees which for the most part have functioned well.

- You have organized conference days very effectively.

14 February Evaluation page 1 continued

Recommendations

- Interpersonal relationships with central administration colleagues and unit administrators result in ineffective outcomes at times.

-There is a need to concentrate and focus on priorities relating to curriculum matters rather than administrative details involving the operation of the District.

- Program evaluation in all areas of the curriculum as well as program evaluation planning have not been evident.

- Middle School curriculum planning for instruction has not resulted in any clearly defined plan although arrangements for staff planning have been attempted.

14 February Evaluation page 2

- The ability to motivate others and to recognize their efforts needs to be improved.

- Knowledge of curriculum content needs to be upgraded.

Summary

The areas of curriculum knowledge and planning and program evaluation are primary concerns regarding your performance. The ability to motivate others through persuasive leadership qualities is another area of concern. You attempt to give your best efforts and work diligently when assigned a task.

14 FEBRUARY EVALUATION PAGE 2 CONTINIUED.

Arthur P. Cotugno
(ADMINISTRATOR'S SIGNATURE)

ADMINISTRATIVE UNIT Central Accounting Unit

I do not agree with the content of this evaluation and have attached a response
Ronald Mass 3-11-92
(EMPLOYEE'S SIGNATURE)

DATE 2/18/92

EXHIBIT O

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

STATE OF NEW-YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

STATE DIVISON OF HUMAN RIGHTS
on the Complaint of

SDHR No: 4-E-RS-92-1200723-E

DR. DONNA J. MOSS,

Complainant,

-against-

GREATER AMSTERDAM SCHOOL DISTRICT,

Respondent

RESPONSE TO DEMAND OF A DOCUMENTATION AND INFORMATION REQUEST

The Respondent, GREATER AMSTERDAM SCHOOL DISTRICT, by its attorney, WILLIAM H. MYCEK, Esq., in response to Demand for Documentation and Information Request, states as follows:

A. INTRODUCTION

1. Dr. Donna J. Moss complains that the Greater Amsterdam School District (hereinafter GASD) has discriminated against her by reason of race, color and sex. The facts will demonstrate that Dr. Moss' allegations are incorrect and lack any merit.

2. GASD is a public school district duly organized under and pursuant to the laws of the State of New York with its principal place of business located at 11 Liberty Street, Amsterdam, New York 12010.

3. Arthur Cotugno was appointed interim superintendent of schools on July 1, 1991, and superintendent of schools on December 9, 1991. He succeeded H. Alan Brown, who upon agreement with the Board of Education, resigned effective June 30, 1991.

4. Dr Moss was appointed as the interim Director of Instruction of GASD on October 16, 1999. Although GASD did not have

have a position of "Assistant Superintendent", Dr. Moss expanded her range of duties and self proclaimed herself "Assistant Superintendent". These presumptive actions on her part caused friction between the professional staff and Dr. Moss as she acted outside the scope of her duties and responsibilities. (See Exhibit B).

5. Mr. Cotugno, upon appointment, began an evaluation of how to more effectively use the resources of GASD and studied the possibility of reorganization of responsibilities and duties. Mr. Cotugno was the Director of Personnel of GASD from 1983 to 1991, when he assumed the interim superintendent office. Inasmuch as he was familiar with the development of the "Assistant Superintendency" created by Dr. Moss, one goal was to concentrate the Director of Instruction to curriculum matters.

6. On February 14, 1992, an evaluation of Dr. Moss was proferred by Superintendent Cotugno. (See Exhibit D). The evaluation contained five (5) commendations of Dr. Moss, namely:

> You have worked diligently in attempting to deal with your responsibilities.
>
> You have provided whatever information has been requested of you in a prompt and orderly manner.
>
> You attempt to keep abreast of what is occurring throughout the District.
>
> You have established and coordinated several com mittees which for the most part have functioned well. You have organized conference days very effectively.

The evaluation also took into consideration Mr. Cotugno's recent assumption of the office of Superintendent, and stated:

> You have had to make adjustments due to the change in leadership and supervision and these factors have been considered

> in assessing your performance over the past eight months.

The evaluation additionally made the following recommendations:

Interpersonal relationships with central administration colleagues and unit administrators result in ineffective outcomes at times.

There is a need to concentrate and focus on priorities relating to curriculum matters rather than administrative detail involving the operation of the District.

Program evaluation in all areas of the curriculum as well as program evaluation planning have not been evident.

Middle School curriculum planning for instruction has not resulted in any clearly defined plan although arrangements for staff planning have been attempted.

The ability to motivate others and to recognize their efforts needs to be improved.

Knowledge of curriculum content needs to be upgraded.

7. It is respectfully contended that the aforesaid evaluation is both positive and constructive, and is neither biased nor discriminatory. Each recommendation was based upon factors irrelevant to race, color and/or sex, are interconnecting and will be treated as follows:

INTERPERSONAL RELATIONSHIPS

There had been difficulties in Dr. Moss' relationship with the Director of Pupil Personnel in areas of the English as a Second Language (ESL) Program and the scheduling of handicapped students for remediation. Mr. Cotugno was required to intervene as a mediator.

There had also been difficulties in Dr. Moss' relationship with at least two (2) of GASD's six (6) departmental chairpersons, namely, the science and vocational education chairs. There existed other problem areas, including use of memo's rather than personal contact, intimidation, humiliation,

RDDIR page 4

dictorial-like direction to professional staff, use of name drop-ping and qualifications rather than employment of constructive discussion and decision making. There were also problems between Dr. Moss and the coordinator of reading, as well as the coordinator of the instructional media center.

Dr. Moss' position is one of leadership and authority, which Mr. Cotugno felt should be used in a more cooperative manner, rather than by its blind imposition upon subordinates, in all areas of staffing.

APPENDIX NOTE. The names of the staff referred to on pages 3 and 4 of the RDDIR by title are as follows:

1. Director of Pupil Personnel:.....John Quatrini
2. Science Dept. chairperson:.....Abdel Sharifi
3. Vocational Education chairperson:.....Paul DiMascio
4. Coordinator of Reading:.....Jayne Steubing
5. Coordinator of Instructional Media:...Margery Zucker

Dr. Moss also had a habit of taking credit for work done by others or committees when she had little actual involvement or contribution to the efforts.

Dr. Moss also had a distinct prejudice against males in the district as she often treated females with more respect and was less critical of their activities. On the whole, her evaluations of females were glowing and praiseworthy while those of males were perfunctory and negative. There were exceptions, but on the whole a marked favoritism was apparent. All of these activities caused resentment and a lack of cooperative effort.

FOCUS ON CURRICULUM AND EVALUATION OF PROGRAMS

Dr. Moss' involvement at all levels in the district including teachers, committees, administrators and chairpersons detracted from the objectives of the Director of Instruction. Although her intentions are noble, this recommendation sought to bring about more concentration in her assigned area.

One area of concern was her direct involvement with the chairpersons rather than permitting the school principals to be

her intermediary.

Mr. Cotugno felt that the Director of Instruction should be more involved in the development of policy and plans for curricular change and to delegate responsibility for implementation to others. In this regard GASD, during July of 1991, was recruiting a teacher for the gifted and talented program and it was determined that neither curriculum goals nor a program evaluation plan was existant. From July to the present time a curriculum evaluation plan has not been established.

Over the last two (2) years, the GASD has been planning to open a new middle school in September of 1992.

Dr. Moss has been responsible for much of the middle school planning activity which has failed to sufficiently address curriculum and its content. Dr. Moss has stated that the curriculum in grades 7 and 8 will remain the same as recommended in the New York State syllabi. However, the New York State syllabi deal with the generalized scope of content for a given subject area and grade level. The concern is in the level of specificity of the program and curriculum. There are programs in aquatics, health, art, music, mathematics, language arts, science, English, social studies for grades 6, 7 and 8, which the District should have reduced to paper at this time. Although this is a difficult task, curriculum development is primarily Dr. Moss' responsibility.

In the area of curriculum Dr. Moss was at times unfamiliar with curricular terms and format and became frustrated. She was unsure of the interpretation of information obtained and often failed to employ the expertise of subordinates knowledgeble in particular areas. Dr. Moss would not encourage development of

dialogue to arrive at a conclusion, but would impose a solution on subordinates without adequate explanation nor knowledge of format and content of a curricula.

MOTIVATION AND RECOGNITION OF OTHERS

Dr. Moss had begun using a number of memo's expressing appreciation of other's efforts. Mr. Cotugno felt that this technique could be used with supervisory and administrative personnel more often. Additionally, Dr. Moss' scheduling of meetings and not appearing for them presented problems with motivation of particular individuals.

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

CURRICULUM KNOWLEDGE UPGRADE

Dr. Moss' strength is more in the area of secondary curriculum and with the constantly changing trends in curriculum areas, particularly in the areas of secondary science, mathematics, and social studies, increased knowledge of content is important. The new middle school program will require a considerable degree of program articulation in grades K-5, 6-8, and 9-12.

8. The evaluation of Dr. Moss, dated February 14, 1992, was a fair assessment of her performance from July of 1991. There were commendatory aspects of the evaluation which Dr. Moss ignores and chooses to focus on one (1) word to distort the sentence's meaning and intent.

. The evaluation was solely based on Dr. Moss' performance rather than her sex or because she is married to an African-American.

* * *

S/ ARTHUR COTUGNO
ARTHUR COTUGNO
Superintendent of Schools

WILLIAM H. MYCEK, Esq.
Attorney for Respondent.

EXHIBIT W

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

The Greater Amsterdam School District
11 LIBERTY STREET
AMSTERDAM, NEW YORK 12010

ARTHUR P. COTUGNO
SUPERINTENDENT OF SCHOOLS

CENTRAL ADMINISTRATION BUILDING
TELEPHONE: (518) 843-5217 FAX: (518) 842-0012

Dr. Donna J. Moss
41 Arnold Avenue
Amsterdam, NY

Dear Dr. Moss:

Please be advised that at the meeting of the Board of Education to be held this evening at 7:30 PM I will recommend to the Board that your contract and probationary appointment be terminated effective 12:00 PM, June 30, 1992. This decision has been made with much thought and consideration.

There are some performance competencies which seriously impede and affect your performance and the ability to effectively and efficiently carry out your duties and responsibilities as Director of Instruction. Among others is the competency related to interpersonal relations that you have with professional and non-professional staff which at times result in conflict.

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

Another area of competency which has not been satisfactorily addressed relates to program evaluations in certain areas of the curriculum, i.e., gifted and talented and alternative education.

Another area of performance which has been a concern is time spent away from the District. Although attendance at conferences is necessary when related to District matters, the collective amount of time has hindered your performance for the responsibilities which you have on a day-to-day basis.

You are welcome to appear before the Board this evening in executive session to make a statement if you wish.

Very truly yours,

Arthur P. Cotugno

Arthur P. Cotugno
Superintendent of Schools

jas'

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

June 17, 1992

8.d. Motion by DeRossi

RESOLVED: that the Board of Education authorize the President of the Board to sign a one year contract with John Quatrini at an annual salary of $57,772 under the same terms of the prior contract.

ROLL CALL: 6 - 0 (M. Decker left at 11 pm)

8.e :Motion by D. DeRossi

RESOLVED: that upon the recommendation of the Superintendent of Schools, Arthur Cotugno, the Board of Education authorize the termination of the probationary employment of Dr. Donna Moss effective June 30, 1992, and thereby not extend the two (2) year contract.

ROLL CALLL: 7 - 0 - 0

8 . f . Motion by D. DeRossi

WHEREAS: that the Board of Education has entered into an agreement appointing ARTHUR P. COTUGNO, 54 Wilkes Avenue, Amsterdam, NY, as Superintendent of Schools effective July 1, 1992 through June 30, 1995 [....] be it therefore

RESOLVED: that the President of the Board of Education be authorized to sign any and all necessary documents effectuating the terms of the agreement. As approved by school district attorney.

ROLL CALL: 7-0-0

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
Staff Personnel Service Unit

PLEASE POST June 18, 1992

VACANCY
DIRECTOR OF ELEMENTARY INSTRUCTION

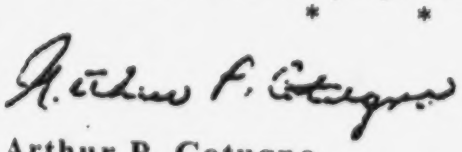
REQUIRED QUALIFICATIONS:

- Shall hold a Masters Degree with studies in Administration, Supervision, Curriculum and Instruction.
- Shall hold a New York State permanent certification as a School District Administrator (SDA).
- Have leadership experience in curriculum development and building administration.

DESIRABLE QUALIFICATIONS:

- Possesses a broad background of experience in Elementary Education, with successful experience in the field of Curriculum and Instruction.
- Recognizes that the need for continuous evaluation of practices in terms of student needs, interests and abilities, is necessary in an effective instructional program.
- Has the ability to work cooperatively with other Administrators, Principals and teachers in the solution of problems and the implementation of innovative programs.
- Is familiar with acceptable pedagogical methods and current curricular developments.
- Is familier with writing and administering State and Federal Grants.
- Possesses skills in interpersonal relationships.

* * *



Arthur P. Cotugno
Superintendent of Schools

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
Staff Personnel Service Unit

PLEASE POST June 18, 1992

VACANCY
DIRECTOR OF SECONDARY INSTRUCTION

REQUIRED QUALIFICATIONS:

- Shall hold a Masters Degree with studies in Administration, Supervision, Curriculum and Instruction.
- Shall hold a New York State permanent certification as a School District Administrator (SDA).
- Have leadership experience in curriculum development and building administration.

DESIRABLE QUALIFICATIONS:

- Possesses a broad background of experience in Secondary Education, with successful experience in the field of Curriculum and Instruction.
- Recognizes that the need for continuous evaluation of practices in terms of student needs, interests and abilities, is necessary in an effective instructional program.
- Has the ability to work cooperatively with other Administrators, Principals and teachers in the solution of problems and the implementation of innovative programs.
- Is familiar with acceptable pedagogical methods and current curricular developments.
- Is familier with writing and administering State and Federal Grants.
- Possesses skills in interpersonal relationships. * * *

EXHIBIT 12E

Arthur P. Cotugno/Superintendent of Schools

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

41 Arnold Avenue
Amsterdam, New York 12010
19 June 1992

Mr. Arthur P. Cotugno
Superintendent of Schools
Greater Amsterdam School District
11 Liberty Street
Amsterdam, New York 12010

Dear Mr. Cotugno:

I received a copy of the vacancy notice for the Director of Elementary Instruction position. I would like to be considered for this position.

I have had district-level and building level experience, including two and a half years as Director of Instruction in the Greater Amsterdam School District. Upon receiving my Ph.D. in Educational Administration, I became Co-Director of Project VOICE at the Albany-Schoharie-Schenectady BOCES. I left this position to become K-12 Principal of the Morris Central School District, which had 450 students. After two and a half years, I became the Elementary and Middle School Principal in the South Seneca Central School District; I had 750 students and 70 staff members. I remained there for four and a half years until I married a Syracuse resident and became House Principal at the North Syracuse Junior High School, which had 1450 students and 150 staff members. I have been Director of Instruction in the Greater Amsterdam School District since October 1989. I feel that the breadth and depth of my experience would contribute to my being a successful Director of Elementary Instruction.

I have also been active in many professional organizations.

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

I have been President of the NYS Association for Supervision and Curriculum Development and the NYS Congress of School Administrator Organizations. I have been on the Board of Directors of ASCD for five years and was elected to the National Nominations Committee this year. I was selected as a 1992 IDEA Fellow and Who's Who in American Women for 1992-1993.

You have a copy of my credentials in your files. I have enclosed a resume for your convenience.

Thank you for your consideration.

Sincerely,
Computer File Copy
Donna J. Moss, Ph. D.

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

41 Arnold Avenue
Amsterdam, New York 12010
19 June 1992

Mr. Arthur P. Cotugno
Superintendent of Schools
Greater Amsterdam School District
11 Liberty Street
Amsterdam, New York 12010

Dear Mr. Cotugno:

I received a copy of the vacancy notice for the Director of Secondary Instruction position. I would like to be considered for this position.

I have had district-level and building level experience, including two and a half years as Director of Instruction in the Greater Amsterdam School District. Upon receiving my Ph. D. in Educational Administration, I became Co-Director of Project VOICE at the Albany-Schoharie-Schenectady BOCES. I left this position to become K-12 Principal of the Morris Central School District, which had 450 students. After two and a half years, I became the Elementary and Middle School Principal in the South Seneca Central School District; I had 750 students and 70 staff members. I remained there for four and a half years until I married a Syracuse resident and became House Principal at the North Syracuse Junior High School, which had 1450 students and 150 staff members. I have been Director of Instruction in the Greater Amsterdam School District since October 1989. I feel that the breadth and depth of my experience would contribute to my being a successful Director of Secondary Instruction.

I have also been active in many professional organizations. I have been President of the NYS Association for Supervision and Curriculum Development and the NYS Congress of School Administrator Organizations. I have been on the Board of Directors of ASCD for five years and was elected to the National Nominations Committee this year. I was selected as a 1992 IDEA Fellow and Who's Who in American Woman for 1992-1993.

You have a copy of my credentials in your files. I have enclosed a resume for your convenience.

Thank you for your consideration.

Sincerely,
Computer File Copy
Donna J. Moss, Ph. D.

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

The Greater Amsterdam School District

11 LIBERTY STREET
AMSTERDAM. NEW YORK 120/0
ARTHUR P. COTUGNO -
SUPERINTENDENT OF SCHOOLS

July 2, 1992

Dr. Donna J. Moss
41 Arnold Avenue
Amsterdam, NY 12010

Dear Dr. Moss:

Please be informed that candidates have been selected for the positions to which you applied.

Very truly yours,

Arthur P. Cotugno

Arthur P. Cotugno
Superintendent of Schools

EXHIBIT
12J

AMENDED COMPLAINT

Case: Dr. Donna J. Moss

vs..

The Greater Amsterdam School District

* * *

9. I was shocked and intimidated when in a 29 January 1992 administrators meeting Mr. Cotugno repeatedly referred to the State Education Department District Review Report about the GASD as "doing it to us with vaseline." On 31 January 1992 Mr. Cotugno ordered me not to contact Zelda Holcombe about inservice training recommended by the State Education Department District Review Report. He said repeatedly that "We are not going to do anything new. We are not going to do any of that shit." I was intimidated and felt threatened by these attacks upon the State Review Report because Mr. Cotugno is fully aware that the ideas, sentiments and concrete recommendations expressed in the SED Report coincide with my own beliefs, programs and projects that I have been actively developing since I started work at the GASD. Also, in both of these instances I found Mr. Cotugno's language to be disrespectful, insulting and offensive to me as a woman and as a female Director. [...].

* * *

I, Dr. Donna J. Moss, verify that the above is my amended complaint.

Michele P. Falls
MICHELE P. FALLS NEW YORK

Donna J. Moss

EXHIBIT 2L

E-1: FREQUENTLY CITED DOCUMENTS AFFIDAVIT

SDHR No.: 4-E-RS-92-1200723-E
Federal Charge No.: 160927144

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS
on the Complaint of
DR. DONNA J. MOSS,

Complainant,

-Against-

ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM et al

Respondents

ANSWER TO THE AMENDED COMPLAINT
DHR No.: 4-E-RS-92-1200723-E

The respondents, by and through their attorneys, Roemer and Featherstonhaugh, P.C., as an answer to the Amended Complaint, state as follows:

1. In response to the allegations contained in paragraph numbered "1" of the Amended Complaint, respondents admit that the complainant was the first female to be employed in the school district in the Central office position of Director of Instruction; admit that plaintiff holds a Ph.D.; and admit, based upon information provided by complainant, that the complainant is in a black-white interracial marriage; and except as so admitted, deny the allegations contained therein [...].

* * *

6. In response to the allegations contained in paragraph numbered "9" of the Amended Complaint, respondents affirmatively state that this is an exaggeration of the conduct which occurred at the meeting on January 29, 1992, and thereafter as it relates to the State Education Department Report; respondents affirmatively state that when Mr. Cotugno received the State Education Report he was disappointed and angered concerning many of the findings contained in the report as were many of the professional staff in attendance at the meeting; Dr. Cotugno advised Dr. Moss that rather than contacting any individuals immediately, that the district was going to review the report to determine what, action would be taken as a result thereof; and as except and as so admitted, respondents deny the allegations contained therein and specifically state that any comments were not directed to or intended to be directed to complainant.

* * *

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are from information received from the Respondents. The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Claudia A. Ryan

CLAUDIA A. RYAN

Sworn to before me this 5th day of August, 1992.

Lois S. Ottoman

Notary Public State of New York
Lois S. Ottoman/ Notary Public State of New York
No. 4766625/ Qualified in Albany County
Commission Expires 1/31/93
A080392v12

E-2: BROWN AFFIDAVIT
District Docket No.347

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEWYORK

Donna Jeanne Moss

Plaintiff — Civil Action No. 95-CV-1356 (LEK)/(RWS)

-against-

Enlarged City School District of the City Of Amsterdam et al

1. H. Alan Brown being duly sworn deposes and says:

2. I served as Superintendent of the Greater Amsterdam School District (hereinafter referred to as "GASD") from November 1986 through June 1991, which included Dr. Donna Moss' (hereinafter referred to as "Donna") period of employment at the GASD from October 16, 1989 - June 30, 1991.

a. Donna's Overall Job Performance

4. During the period of October 16, 1989 - June 30, 1991 when I was her Superintendent and immediate supervisor, Donna was an outstanding educator and human being in every respect. A copy of my recommendation of Donna Moss that I prepared for her Syracuse University employment placement folder is annexed hereto and marked Exhibit "A".

6. Donna was very well-organized and task oriented. She was able to prioritize her time in order to complete the many tasks that were assigned to her. She did not miss deadlines and often stayed late or came in on weekends to keep on top of things. Her work ethic was outstanding!

10. Due to her success as Interim Director, Donna was subsequently hired as the permanent Director of Instruction on a tenure track with a tenure decision date of October 16, 1992.

18. Donna also did a commendable job on her completion of various SED grant audits during the 1990-1991 school year, as well as on the action plan that she developed in response to the District Chapter I/PSEN audit conducted by SED the preceding spring. This well developed plan was shared with administrators and staff. In addition, Donna effectively wrote and coordinated the District's grant programs (Exhibit "D", p. 2, Commendation 7). Donna was also commended by NYSED for her accomplishments in this area. A copy of the commendation of Donna Moss by SED Compliance Officer Werner Jacobsen on the SED audit cover sheet annexed hereto and marked Exhibit "E".

b). Interpersonal Relationships and Leadership

21. During the period when I worked with her from October 1989-June 1991 Donna was a "people person". She was warm, outgoing, and an excellent listener. She worked extremely well in group settings as demonstrated in such successful projects as the Middle School Plan, Elementary Curriculum Council, and Superintendent's Conference Day. This was one of the many strengths that she brought to the job. (Exhibit "A", p. 1, paragraph 4).

28. In addition to her excellent administrative skills on the central office level, Donna also had had extensive building level experience as a building principal at every level K-12. This experience showed through in her ability to work with the principals and the chairpeople from a vantage point of her having a first hand knowledge of problems, responsibilities, and realistic possibilities and expectations with regard to building level operations and personnel, and this extensive experience translated directly into Donna's

outstanding ability to get things done on the grass-roots building level.

30. Based on my experience working with them, Vocational Education Chairperson Paul DiMascio, Director of Pupil Services John Quatrini, and IMC Coordinator Margery Zucker were problem employees who had severe job performance deficiencies and interpersonal relationship difficulties with other staff. Elementary Principal (and Reading Coordinator) Dr. Jayne Steubing was competent in her job performance, but was known for having interpersonal difficulties and conflict with staff. Based on my experience of working with DiMascio, Quatrini, Zucker, and Steubing their job performance deficiencies, ineffective outcomes, and/or interpersonal difficulties were due entirely to their own shortcomings as employees and were not the fault of, the result of, or caused by Donna Moss or Donna Moss' interpersonal relationships with them.

c). Curriculum Development, Knowledge, and Leadership

31. Donna brought many strengths to her position. First, and most important, was her understanding of curriculum development. She is truly an expert in this field and commanded the respect of staff members at all levels because of her extensive knowledge. (Exhibit "A", p. 1, paragraph 4)

33. She spent considerable time with the administrative staff reviewing their requests and offering suggestions for future courses and curriculum improvements. Her leadership in this area was excellent. (Exhibit "D", p. 2, Commendation 6)

35. Donna, with much assistance from Joann Bush, a first grade teacher from Bacon School, helped to schedule, organize, and conduct one of the most successful Superintendent's Conference Day programs ever offered in the District.

The programs presented in April 1990 included staff training and workshops in instructional techniques and curriculum presentation. The breadth and quality of the programs and instructors were remarkable and formed the basis for future collaborative programs. I wrote on her 1990 evaluation "Good job!" (Exhibit "C", p. 2, Commendation 5).

36. During 1990-1991, Donna's involvement in the preparation of the 1991-1992 school budget continued to be commendable. She again was also involved in the on-going evaluation of the budget during the budget uncertainties that year and spent considerable time with the administrative staff reviewing their requests and offering suggestions for future courses and curriculum improvements. Her leadership in these areas was again excellent. (Exhibit "D", p. 2, Commendation 6)

38. Donna gave a presentation on the GASD's curriculum to a concerned citizens group, which was well received and highly commended (Exhibit "D", p. 2, Commendation 8). A copy of the commendatory letter to Donna from the Amsterdam Study Group for her presentation on the District's curriculum annexed hereto and marked Exhibit "G".

40. The elementary staff were very enthusiastic about the new Science and Social Studies curricula that were developed by the Elementary Curriculum Council, Mary Mathey, and Nellie Bush under Donna's curriculum leadership and with her active participation. (Exhibit "D", p. 3, Recommendation 4)

d). Evaluation of Curriculum and Programs

42. Donna's first and preeminent priority when she came to the District was the evaluation of the entire K-12 curriculum and she formalized this priority in the set of written goals that I asked her to develop and submit to me.

Donna achieved this goal in her usual thorough and excellent fashion (as shown by the examples of evaluation and assessment given below in paragraphs 43-48 et al). A copy of her letter to me citing evaluation of the District's K-12 curriculum as Donna's first and primary goal and priority is annexed hereto and marked Exhibit "H".

44. On the middle school and high school levels Donna worked with the department chairpersons to create new Five Year Program Development Plans which provided for and scheduled curriculum evaluation and curriculum writing for each course over a five year period through 1996. She also worked with the high school principal in the development and submission of "New Course Offering Proposals" and "Curriculum Writing Proposals". Copies of "Curriculum Update" memos concerning the development and announcing of the new Five Year Plans and an example of a Five Year Plan are annexed hereto and marked Exhibits "K", "L", and "M" respectively.

45. Donna gave the Comprehensive Assessment Report (CAR Report) with John Quatrini and they were sent a joint letter of commendation for giving what was probably the most professional CAR Report presentation the Board and community had ever seen. Copy of letter of commendation sent to Donna's personnel file annexed hereto and marked Exhibit "N".

46. In each year from October 16, 1989-June 31, 1991 Donna also coordinated, helped develop, and prepared an extremely rigorous CAR Report "follow-up" curriculum and instruction analysis report which included all of the areas in the District which were tested under the CAR Report. The Follow-up Reports included an analysis of Reading, Math, Science, Social Studies, Global Studies, History and Government, Foreign Language, and Occupational Education for

grades K-12 as respectively relevant. The Reports were presented to the GASD Board of Education.

Copy of March 1, 1990 CAR Follow-up, (i.e., evaluational curriculum and instruction analysis) Report; copies of January 8, 1991 memos making information request of principals and department chairpersons, April 17, 1991 Board of Education meeting Agenda, and copy of April 1991 CAR Follow-up Report annexed hereto and marked Exhibits "0" and "P" respectively.

48. Under Donna's administrative curriculum leadership the District Computer Specialist Nancy Bartsch and the District Computer Committee evaluated and updated the District's entire computer curriculum K-12 for implementation during the 1991-1992 school year. This was presented to the Board of Education. (A copy of a memo in preparation for the presentation to the Board annexed hereto and marked Exhibit "Q").

49. Donna also led the staff in doing many other evaluations, assessments, and reports spanning the entire District which are too numerous to list here, but two illustrative examples are the excellent "Full Day Kindergarten Report" that she did at my request and which eventually (unfortunately not until after her termination) led to the adoption of a full day Kindergarten Program in the District and the June 1991 "Pre-Employment Training Skills Report" Donna and the staff completed. Copies of the Kindergarten Report and Training Skills Report annexed hereto and marked Exhibit "R".

e). Alternative Education Program (Project Pride)

50. On her 1990 evaluation I commended Donna for her success it developing an Alternative Education Program at Amsterdam High School. Without her active involvement, it is unlikely that the Board of Education would have had

enough confidence in its organization to fund it. Fortunately, after several revisions, a plan was presented to the Board and was approved. I wrote on her evaluation with regard to the development of this program "Good job!", and indeed it was. (Exhibit "C", p. 1, Commendation 3)

51. During her second year as Director of Instruction for the GASD, Donna's contribution to the development of the Alternative Education Program at the AHS continued to be commendable. She worked closely with High School Assistant Principal Dick Jankunas, and as a result the Alternative Education (Project Pride) Program was a success in its first year. (Exhibit "D", p. 4, Commendation 4)

53. As of June 30, 1991 when I left the District the Alternative Education Program (Project Pride) was an excellent, rigorously and extensively evaluated, and very popular Program that had been developed in very close communication and consultation with the GASD Board of Education and me.

f). The Gifted and Talented Program

55. Donna and the Gifted and Talented Program staff participated in a three-year State evaluation project in which they chose rigorous math and science options from the curriculum development planning selections that the project presented (Exhibit "U", p. 4, item 6). As Superintendent I review-ed and signed off on the Project forms which were submitted to NYSED. Copies of the 1989-1990 and 1990-1991 NYSED Evaluation Fact Sheets with my signature annex-ed hereto and marked Exhibit "U".

57. Even before Donna came to the GASD the Gifted and Talented Program had been an excellently run, properly evaluated, and very effective program which was also very popular with the Board of Education and the Amsterdam com-

munity. As of 30 June 1992 when I left the District Donna had maintained the excellence of the Gifted and Talented Program and had in some ways added to that excellence.

g).The Middle School Project

58. Donna showed outstanding vision and leadership during the 1990-1991 school year with the Middle School project. She wrote the Fund for Innovation Middle School Study grant that was awarded to the District (Exhibit "D", p. 1, Commendation 2). As Superintendent I reviewed, approved, and signed the Grant before it was submitted and was directly involved in much of the union negotiations and Board of Education discussions with respect to the Middle School plan. Copies of the Fund for Innovation Middle School Grant, letter of announcement to the Board of Education, and Union agreement signature sheets are annexed hereto and marked Exhibit "W".

61. In The Fund for Innovation Middle School Grant Donna provided for curriculum development and writing by staff to be implemented through 1993 (Exhibit "W", p. 10, item 2; item 3. b. vii). Donna also led the coordinators and staff in developing a new "teaming" instruction method which the Grant also provided for (Exhibit "W", p. 1, item A.1; p. 6, item 3. c. 2; p. 10, paragraph 1; p. 11, item 4b, iii; p. 12, item 2).

62. Pursuant to the provisions of the Grant and subsequent development of the plan, in June 1991 the Middle School teachers wrote a teaming philosophy and curriculum and instruction guidelines for implementation on the classroom level. (Exhibit "X" annexed hereto).

64. On June 3, 1991 the Middle School Study Committee, Amsterdam Teacher Association (i.e., union) President Bruce Miseno, and I met and reviewed, analyzed, finalized, and voted to adopt each aspect and provision of the

Middle School plan as developed under the Fund For Innovation Grant item by item. A copy of the scheduling memo setting out the June 3, 1991 meeting agenda is annexed hereto and marked Exhibit "Y".

65. The Middle School project was the largest and most demanding project that the District undertook during the period of 1989-June 1991 and it absorbed much of the attention and the energies of the Board of Education, the Superintendent, the Central Administrative staff, and the Middle School staff during that period.

66. As of June 30, 1991 when I left the District as Superintendent of the GASD, there existed a clearly defined and excellent plan for Middle School curriculum and instruction and program evaluation which additionally included clear and comprehensive provisions for the further development, evolution, and implementation of curriculum and instruction in the Middle School through 1993 and beyond. Moreover, it is my understanding that it is the "teaming" system developed under the Fund For Innovation Grant that the GASD Middle School uses to this day.

h). Donna's Evaluations and Recommendation

67. During the course of her employment I gave Donna three excellent and outstanding evaluations. [...].

i). Donna's Termination From The GASD

68. Donna Moss was a gem! She was bright, articulate, committed, and knowledgeable. Based upon the quality of her job performance up to and as of June 30, 1991 when I left the District, Donna Moss was deserving of being granted tenure at the proper time (October 16, 1992 was her tenure decision date). It was my intention to at the proper time recommend Donna for tenure as GASD Director of Instruction and if I had

continued on as Amsterdam's Superintendent I would have in fact done so. (Exhibit "A", p. 2, paragraph 2.)

69. Donna's job performance as Director of Instruction was at least equal to and in many ways superior to the other GASD Directors who I supervised as GASD Superintendent of Schools and who had been granted tenure by the GASD, specifically Directors John Quatrini, Charles Caruso, Arthur Cotugno, and Ron Wyszomirski.

70. On the basis of my experience working with Donna (as described in this Affidavit), I believe that the assertion that Donna Moss suddenly went from being the excellent and outstanding administrator that I knew to being so incompetent that she did not even deserve to be employed in the Greater Amsterdam School District is farfetched, prohibitively unlikely, and altogether unbelievable.

71. Moreover the assertion that Donna Moss was terminated from her position as Director of Instruction of the GASD because her job performance was allegedly incompetent or unsatisfactory is likewise and for the same reasons absolutely incredible.

H. Alan Brown

Sworn before me on this date
2nd Oct. 1997

Notary Public
LAWRENCE SPAGNOLA
NOTARY PUBLIC-STATE OF NEW YORK
RESIDING IN MONTGOMERY COUNTY
COMMISSION EXPIRES 5-31-98

E-2: BROWN AFFIDAVIT

November 19, 1990

Dr. Donna Moss
Director of Instruction
Greater Amsterdam School District
11 Liberty Street
Amsterdam, NY 12010

Dear Dr. Moss:

Thank you very such for your fine presentation to the Amsterdam School Study Group last Thursday evening at the Clara Bacon School. You certainly acquainted those attending most ably with the elementary and secondary curriculum of our District. All there left the meeting with a much better grasp of the contents of the required and elective subjects offered to the students. The nine handouts, the many exhibits displayed on the screen, your extended comments, and answers to questions throughout combined to provide very comprehensive coverage of the meeting topic. The material the people took home should be a most useful reference when questions arise as to the structure of our curriculum as time passes.

Also, your outline of developments and trends in today's curriculum at the close of your talk was very revealing.

Finally, we appreciate permission to hold this session in the very comfortable Auditorium of Clara Bacon School free of charge.

Thanks again for your efforts.

Sincerely,

Charles D. Ferris
Amsterdam School Study Group
273 Guy Park Ave.
Amsterdam, NY 12010

Copy: Mr. H. Alan Brown, Superintendent
Greater Amsterdam School District

E-2: BROWN AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
OFFICE OF INSTRUCTION
MEMO

TO: Bert DeRose
Stan Dzikowicz
Richard Jankunas
Claude Palczak

FROM: Donna J. Mosa Donna

RE: Five Year Program Development Plan Form

DATE: September 13, 1990

Attached please find a copy of the new Five Year Program Development Plan form for the Office of Instruction. While this form was originally developed and completed prior to my coming to the district, last year the department chairpeople and I worked on updating the format of this form -- and up-dating the information requested on this form. The result of those efforts is the new form!

Each of you serve as a chairperson in one or more areas. The Five Year Program Development Plan form was not submitted to you last year to be completed/updated. This needs, however, to be done now.

I would appreciate it if you would meet with the members of the department(s) that you are chairperson of and complete the new Five Year Development Plan. I have enclosed a copy of the form that was completed prior to my coming to the district; this contains information for 1988-89 and 1989-90

that may not be accurate -- please place the correct 1988-89 and 1989-90 information on the new form. New information is also requested for your curricular area, including a five year plan for staff development, projected budgeting needs, and projected staffing needs for 1990-1995; please complete all information on all the sheets.

I would appreciate receiving this by Monday, 15 October 1990.

If you have any questions or concerns, please feel free to contact me.

Thank you for your assistance.

ems
Enc.
cc: Alan Brown

E-3: SEAVEY AFFIDAVIT
[District Docket 348

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
DONNA JEANNE MOSS, Plaintiff,
- against -

Civil Action No.
95-CV-1356
(LEK)/(RWS)

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, et al.

Defendants

AFFIDAVIT OF TAMA SEAVEY

I, TAMA SEAVEY, being duly sworn, depose and say, that:

1. I reside at 55 Haskell Street, Hagaman, Montgomery County, New York.

2. I have resided in the Amsterdam, New York area since 1975, moving away for a short time and returning in 1982.

3. I received my Bachelor's Degree in Business Administration from the University of New Hampshire in 1979.

6. Although I know who Donna Moss is as a result of my attendance at Greater Amsterdam School District Board of Education, hereinafter referred to as GASD Board, meetings and my involvement in work to achieve racial equality and fundamental fairness in the Greater Amsterdam School District, hereinafter referred to as GASD, I never have been a personal friend of Dr. Moss nor have I been involved directly or indirectly in the matter of her termination from her position by the GASD Board.

7. My involvement with the GASD initially started because I reside in the District and have two (2) daughters who at that time attended school in the District.

8. After my eldest daughter entered Amsterdam High School, my awareness was heightened with respect to matters of racial tension and continuing unequal, discriminatory treatment of minority students by the GASD.

91. In a September 28, 1991 letter that I wrote to then-Commissioner of Education Sobol I requested the immediate intervention of the State to help solve this situation. In this letter I recounted many of the incidents of racism and discrimination that are included in this Affidavit. I also sent copies of this September 28, 1991 letter to Arthur Walton (Deputy Commissioner - Office for Elementary, Middle & Secondary Education), Angelo Del Toro (Chair - N.Y.S. Assembly Education Committee), Hector L. Dias (Chair - N.Y.S. Assembly Puerto Rican/Hispanic Task Force) and Paul D. Tonko (105th Assembly District). A copy of my September 28, 1991 letter to Commissioner Sobol is annexed hereto and marked Exhibit "D".

92. Primarily as a result of my September 28, 1991 letter the New York State Education Department from November 20, 1991 to November 22, 1991 undertook an investigation of conditions of racism and discrimination in the GASD.

93. In January 1992 the results of the November investigation were released in the N.Y.S.E.D. "District Review Report". Many of the findings of this Report confirmed and vindicated my allegations concerning the racially hostile environment and conditions in the District. A copy of the January 1992 "Greater Amsterdam School District, District Review Report" is annexed hereto and marked Exhibit "E".

106. When I started attending GASD Board meetings, I became aware of who Donna Moss was because I observed her in attendance at those Board meetings as a member of the GASD administration.

108. Over the course of time I observed Donna Moss at the GASD Board meetings I became aware of the fact that Donna Moss did not behave in the same manner as did the majority of the GASD Board members and selected administrative staff who attended the Board meetings, and that Donna Moss, in fact, openly supported multi-cultural education and equal treatment of minority students.

109. It also became very clear to me as I observed the interaction among those in attendance at the GASD Board meetings that when Donna Moss spoke in support of equality and fairness in treatment of students, including minorities, and when Donna Moss argued in favor of implementation of and expansion of multi-cultural education in the GASD, both the majority of the Board members and the Administration treated her rudely and with hostility, openly, going from ignoring Dr. Moss to talking through her presentations.

110. My observations of the GASD Board members and the GASD administration not only developed from observations made at the meetings, but also from personal interaction with Board members and administration, including but not limited to Superintendent Art Cotugno.

118. The SED announced its findings at a public meeting at the GASD Administration Building.

119. I attended the meeting at which the SED announced its findings.

120. Art Cotugno was also present at that meeting at which the SED Report findings were announced.

121. Following the conclusion of the meeting, I made my way to Art Cotugno for the purpose of engaging him in conversation to attempt to determine what his actual position was with respect to the SED findings.

122. During the course of my conversation with Art

Cotugno, Art Cotugno stated to me that although he agreed with a few of the findings in the SED Report, he did not agree with the majority of the findings in the SED Report.

123. I asked Art Cotugno why he did not agree with the majority of the findings of the SED Report.

124. In response to my question, Art Cotugno respond-ed to me that he believed that "...it is a case of nature versus nurture."

125. I responded to Art Cotugno by asking him to clarify his statement.

126. Art Cotugno then stated to me, in words or substance, that he believed that the majority of Hispanic students could not achieve even if they were given the opportunity.

127. I further pursued the attempt to clarify Art Cotugno's position, asking him to explain why he believed that Hispanic students could not achieve in school.

128. Art Cotugno elaborated to me about his views and stated, in words or substance, that Hispanic students could not achieve in school because they did not have the back-ground to achieve because they did not come from the nurturing kind of environment that is necessary to succeed, in-stead, the Hispanic students come from broken homes, many of their parents are unemployed, many of their mothers were young and unwed, and numerous other deficiencies which he went on to enumerate to me.

129. Art Cotugno later repeated his above stated "theory" regarding Hispanic students to Teresa Cuda, a reporter with the *Amsterdam Recorder* newspaper, where his statements were printed and stood unchallenged and undenied by Art Cotugno.

163. During my attendance at GASD Board meetings, while Dr. Donna Moss was employed by the District, I observed her performance as a member of the GASD administration.

164. At that time I did not know what position Donna Moss took with respect to the issues of concern to me that were before the Board.

165. I was aware that Donna Moss sat at the GASD Board table at meetings and that caused me to be wary of her motives and of her agenda.

166. As I attended the GASD Board meetings, I became aware that Donna Moss handled curriculum development and as such was someone who I watched closely.

167. At that time, the GASD Board was discussing issues relating to content of curriculum and how to incorporate the issues of cultural and ethnic diversity into the curriculum.

174. I personally observed that at GASD Board meetings on several occasions Donna Moss put forward recommendations and proposals in the curriculum area which would have helped to bring the District in the direction of compliance with the SED Report which ultimately was issued following the above referred to investigation.

175. I also personally observed the GASD Board while Donna Moss made discrimination correcting and multicultural presentations to them.

176. During the course of Donna Moss' discrimination correcting and multi-cultural presentations, the majority of the male Board members obviously failed to give their attention to the presentation and spent their time fidgeting, shifting in their seats, rolling their eyes upward, turning their backs to her, making "oooo" noises and rudely interrupting her.

198. Based upon my review of the GASD proposed response plan to the SED Report, several areas of deficiencies in the GASD program were areas in which Donna Moss previously had presented proposals to the Board which, if adopted, might have avoided the original citation of deficiency in the SED Report.

199. Many of the areas of criticism of the GASD by the SED were areas on which Donna Moss had attempted to focus Board attention for action at Board meetings which I personally attended.

201. Again, as I personally observed, several of the areas enumerated by the SED were areas which Donna Moss had attempted to address and to have the GASD Board to act on, and which they ignored, during the public Board meetings which I attended.

206. Subsequent to Donna Moss' termination by the GASD from her position, I became aware of the woman who replaced Donna Moss in her position with respect to GASD curriculum.

207. I observed Donna Moss' successor at GASD Board meetings and observed that she was not diversity focused.

208. I observed that Donna Moss' successor failed to pursue both the multi-cultural programs previously proposed by Donna Moss and the programs previously proposed by Donna Moss focused on curriculum development in the GASD to enhance the educational opportunities of minority students in the District designed to move toward equality of education in the District.

Tama Seavey

TAMA SEAVEY

Sworn to before me on this 28th day of October 1997.

Notary Public

RANDALL D. BENEDICT Notary Public NYS/. Residing in Schenetady County

E-4: RIVERA AFFIDAFIT
District Docket No. 349

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS,

Plaintiff,

against

Civil Action
No. 95-CV-1356
(LEK) (RWS)

THE ENLARGED CITY SCHOOL
DISTRICT OF THE CITY
OF AMSTERDAM et al

Defendants.

AFFIDAVIT OF CARMELO RIVERA

Carmelo Rivera being duly sworn deposes and says:

1. My current address is P.O. Box 6665, Sunny Isles, St. Croix, U.S. Virgin Islands 00823.

2. I am currently employed as Commissioner of the Department of Labor for the Virgin Islands.

3. In 1992 I applied for a Principalship at the Greater Amsterdam School District (hereinafter "GASD"), but I was not given a serious job interview. The Personnel Director called me once at the behest of a friend of mine, who was concerned about the complete absence of Hispanics in professional positions in the GASD.

4. I do not recall the name of the Personnel Director, but I have been informed that his name was Ronald Limoncelli. I understand that he is still employed there.

5. When I spoke with the Personnel Director I realized that it was not an interview, it was simply an appeasement {let's talk to this guy and get him out of the way} kind of meeting.

6. It was not a substantive interview; there were no questions about qualifications or whether I was certified as a school district administrator or principal.

16. I have never met Dr. Moss (I have spoken with her on the telephone twice), but the kind of remarks that I heard about Donna Moss indicated that she was a friend of the minority community. I suspect that this is what got her in trouble in the GASD.

17. Dr. Moss was someone a member of the minority community could feel comfortable with and she was trying to make some inroads for them--- that is what I heard.

Carmelo Rivera

Sworn before me on
this 25 th day of
August 1998.

Notary Public
8/19/2000

E-5: BUSH DEPOSITION
District Docket No. 350

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
DONNA JEANNE MOSS,

Plaintiff,

-against-

Civil Action No 95-CV-1356 (LEK)(RWS)

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, et al

Defendants

STENOGRAPHIC MINUTES OF THE DEPOSITION of Non-Party Witness, NELLIE BUSH, held pursuant to Notice returnable on Tuesday, the 3rd Day of April 2001 at 1:00 p.m. at the Albany Quality Inn, 3 Watervliet Avenue, Albany, New York, before MARCI DeMURA, a Shorthand Reporter and Notary Public in and for the State of New York.

Deposition page 41

Q. Would you describe to the best of your recollection any occasions upon which Ronald Limoncelli may have raised his voice at you prior to the period of June 1992?

A. Repeat that.

Q. Would you describe any occasion upon which Ronald Limoncelli may have raised his voice at you prior to June of 1992?

A. There were occasions with not just Mr. Limoncelli that

Depostion page 42

voices may have been raised. If you're asking for something specific, I can't give you specific details.

Note: Questions were asked by Petitioner Moss acting *pro se*.

Q. Are you saying then that Ron Limoncelli did raise his voice at you?

A. I'm saying there may have been occasions where voices were raised. I can't be specific.

Q. Who else may have raised their voice at you?

MR. COMETTI: Hold on.
(Outside interruption)
(Brief Recess)

Q. So you have said that there are many occasions -- that many voices were raised on different occasions?

A. Donna, what I'm saying is --

MR. COMETTI: You may answer. Just note my objection. Go ahead.

A. I can't be specific except to say that in the nature of our jobs there are times that we don't always agree with each other. There may also be times that voices are raised, but then you go on and you do the job. But if you're asking for specifics, I have to tell you --

MR. COMETTI: Just answer the question.

A. I don't remember. I mean, but --

Deposition page 43

Q. Who may have raised their voice? Who do you remember raising their voice?

A. It could be lots of different people.

Q. Such as?

A. It could be colleagues and myself. Fellow principals. It could be directors down at central office. On any occasion for whatever the reason may be.

E-5: BUSH DEPOSITION

Deposition page 49

Q. Was there a time when Jane Steubing had a habit of behaving in an openly rude manner toward you?

MR. COMETTI: Note my objection.
MR. HAYDEN: I object also.

A. Yes.

Deposition page 50

Q. Do you ever recall saying to me in words or substance that Larry Traskis undermines people?

MR. COMETTI: Note my objection.

A. I could have said that, yes.

*..... *..... *

Q. Did you ever tell me -- do you recall telling me that you did not get along with Larry Traskis and that you

Deposition page 51

avoided him and avoided having as little contact with him as possible?

MR. COMETTI: Note my objection.

A. I don't recall those specific words, but that's a strategy that I use.

Deposition page 65

Q. Okay. With respect to your own experience would you characterize my administrative style while Director of Instruction in the district as being dictatorial?

MR. COMETTI: Note my objection. You can answer.

A No.

Appendix Note: "Traskis" is a misspelling of "Trazskos".

Q. Would you say that as Director of Instruction I based how I acted towards you as based on intimidation, humiliation or blind imposition of authority?

MR. COMETTI: I'm going to object to the form.

A. You treated me with respect.

Q. Would you say -- would you characterize my administrative style as professional in regards to the workings that we had in the district?

A. Yes.

Deposition page 68

Q. Prior to June 1992 did John Catreni ever raise his voice to you?

A. I refer back to the fact that there are occasions, whatever they may be, I can't be specific in regard to raising our voice. I can't be specific. And when I say that, I'm talking about administrative meetings.

Q. So am I understanding you correctly in that prior to June 1992 John Catreni may have raised his voice at you in administrative meetings?

MR. COMETTI: Note my objection.

A. I'm not going to say it never happened, but I don't recall.

Q. Did you ever prior to June 1992 hear John Conwall raise his voice at John Catreni?

A. Yes.

MR. COMETTI: Note my objection.

Appendix Note: "Catreni" is a misspelling of "Quatrini".

E-5: BUSH DEPOSITION

CERTIFICATION

I, MARCI DeMURA, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the proceedings reported by me, to the best of my knowledge and belief, in the matter held on April 3, 2001.

Dated

April 6, 2001

MARCI DeMURA

E-6: AFFIDAVIT RE *RUF V.GASD*
District Docket No.351

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
DONNA JEANNE MOSS,
Plaintiff,

Civil Action
No. 95-CV-1356,
(LEK)(RWS)

against-

ENLARGED CITY SCHOOL DISTRICT OF
THE CITY OF AMSTERDAM et al,

Defendants

AFFIDAVIT RE RUF V. GASD et al

I, Donna Jeanne Moss, being duly sworn, state and depose as follows.

1. A true copy of the following documents are annexed and marked Exhibits "A" – "H", as indicated in paragraphs 2-9 below.

Donna J. Moss

Donna J. Moss, Ph.D.

Sworn before me on this
19th day of April 2001

Anna P. Goodwin Gremer

Notary Public

ANNA P GOODWIN-GREMER
Notary Public, State of New York
Reg. #0IG05025241
Qualified in Ulster County
Commission Expires March 21, 2002

E-6: AFFIDAVIT RE *RUF V.GASD*

GREATER AMSTERDAM SCHOOL DISTRICT
PUPIL SERVICES/ SPECIAL EDUCATION
MEMORANDUM

TO: Ronald Bartman, Speech Therapist
FROM: John S. Conwall, Supervisor of Special Education
RE: Summary of our March 15, 1991 Meeting
DATE: March 22, 1991

* * *

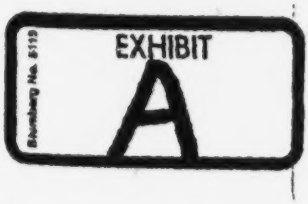
Further, it is relevant to note that at the beginning of this meeting you very aggressively and angrily tore up the memo which I sent to you on 3/6/91 and threw it on my desk. I attempted to focus this conference on the issue for which it was called, however, you continually raised your voice in a loud and threatening manner along with your ATA representtative, loud enough to be heard outside of my office even though the door was closed.

* * *

Also, your belligerent, confrontational, and antagonistic behavior on March 15th was totally uncalled for and unprofessional. Your behavior, especially as it related to tearing up my March 6th memorandum, could be deemed insubordinate. In the future you are hereby directed to keep your temper under control and to behave in a rational, professional manner during our meetings.

cc: Mr. H. Alan Brown
Mr. J. Quatrini
Personnel file.

EXHIBIT #2 of



E-7: MOSS INTERROGATORY RESPONSES
District Docket No.352

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK 17 JUNE 1997
DONNA JEANNE MOSS, Civil Action No
Plaintiff, 95-CV-1356
- against
THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, et al
Defendants

PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

434. On 10 February 1992 Arthur Cotugno rudely and abruptly refused my invitation to have supper with nationally renowned multi-cultural author Rafe Martin, Author-in-Residence Committee members, and me even though I gave him a choice of 2 evenings for his convenience.

665. Early in May 1992 Arthur Cotugno chanted my name as he was leaving the District office for the night and walked down the hallway outside my office where I was working late.

666. He engaged in this chanting behavior even though he had on his 31 March 1992 RDDIR written that since my Human Rights Complaint had made him aware that sing-songing my name bothered me he would not do it anymore.

667. On Monday, 4 May 1992, when calling hours were held for a GASD student who had committed suicide, Arthur Cotugno arranged to go to calling hours during the work day with the untenured non-interracially married central office male administrators (i.e., Business Manager Seward and Director of Personnel Limoncelli) and did not invite me to go along although I was in my office and available to go.

668. I went to calling hours alone.

E-7: MOSS INTERROGATORY RESPONSES
[Moss Response to GASD Interrogatory #11]

9/5/91

Recorder photo:Dave Wojeski
Protester Ivette Perez pickets for the resignation of GASD board member Charles Ferris during a Board of Education meeting on Sept. 4, 1991

Page 12 of **Exhibit A**

E-7:MOSS INTERROGATORY RESPONSE

STUDENTS MAKE VOICES HEARD

9/25/91

Recorder photo Lisa Major
SUNY student Jose Maymi
stresses the need for a
multi-cultural curriculum.

Students at Amsterdam High School are organizing in an effort to start a group to address racism in the school.
A petition with 227 signatures, including three from teachers, was presented to the Board of Education at Wednesday's public forum on minority issues.

"The self-esteem of the Hispanic students is suffering in our schools because we hear every day negative messages about who we are here".

* * *

Page 30 of Exhibit "A"

E-7:MOSS INTERROGATORY RESPONSE

COMPLAINTS SENT TO SOBOL

10/11/91

SEAVEY

The chairperson of the Citizen's Alliance Against Racism has contacted state Education Commissioner Thomas Sobol about problems the feels exist in the Greater Amsterdam School District.

"There are a number of allegations contained in that report which are under investigation by me," said Cotugno. "At this point it would be inappropriate for me to discuss the contents prior to discussing it with the Board of Education."

Cotugno said board members will be receiving a copy of Seavey's letter today and will discuss it at Wednesday's meeting.

In a five-page letter sent Sept. 28 to the commissioner, Tama Seavey details what she calls racist incidents at Amsterdam High School.

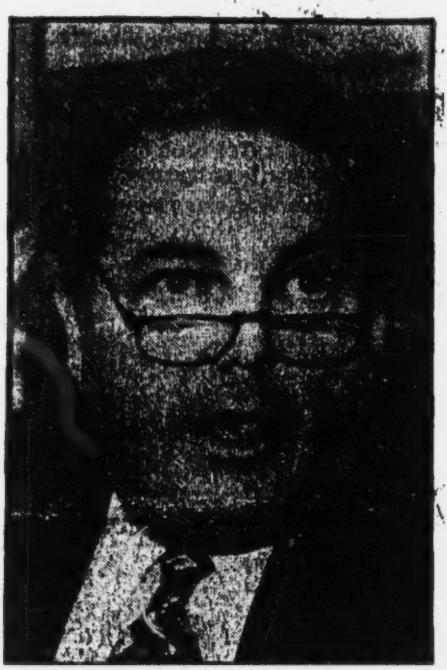
"Every day my daughter came home from school with news of violent fights and verbal altercations that were taking place between white and Hispanic students," Seavey said in the letter, referring to incidents that took place during the 1990-91 school year.

She said minority students are regularly badgered and called "niggers" and "spics" by white students in full view of teachers and other school personnel

E-7:MOSS INTERROGATORY RESPONSE

STATE TEAM FINDS BIAS IN SCHOOLS

By TERESA CUDA/ Recorder News Staff



MICHAEL MOSTOW **1/29/92**

Special projects coordinator

Severe problems exist in the Greater Amsterdam School District because of a lack of understanding and sensitivity to persons from different racial, ethnic and economic backgrounds, according to a report released today by state officials. ***Page 64 of Exhibit "A"***

Editorial **1/29/92**

Sick school district depicted in report

Attention was focused on racism in the Greater Amsterdam School District by a boorish, ignorant remark directed toward Hispanics by school board member Charles Ferris.

It was the first of many.

Ferris unwittingly opened the door not only to questions about his own fitness to serve in public office, but also on how minorities - and later the handicapped - are treated by the school system itself.

Claims were made that minority students are not offered equal educational opportunities, harassment is not uncommon and administrators close their eyes to racial problems. Others, including teachers, were accused of actually making the problems worse.

After weeks of turmoil, demonstrations and calls for Ferris to step down, the state Education Department sent a team to Amsterdam to investigate the situation.

The team's report, formally issued today, stands as an indictment of some school board members and the district they oversee.

Many board members, the report says, lack an understanding of student needs in general; Hispanic students' needs in particular.

"The lack of sensitivity on the part of some board members represents a serious barrier to improving education and communication in the district and intolerance of racial differences," the report states. * * * ***Page 68 of Exhibit "A"***

1/30/92

Emotions run high at GASD

By, TERESA CUDA
Recorder News Staff

Students, parents and some community leaders reacted with relief to a report released Wednesday about the Greater Amsterdam School District.

But some teachers and school officials said they view the document written by state Education Department officials with some anger and not a little hostility.

* * *

1/30/92

Racist remarks in the report

By TERESA CUDA
Recorder News Staff

Charges of racism have plagued board member Charles Ferris and the Greater Amsterdam School District for months. The report released by the state Education Department in a press conference Wednesday added another twist to those charges.

According to sources outside of the SED, Ferris and board member Frank Persico made what SED officials referred to in their report as statements "deemed racist by Department staff" during interviews in November.

Persico apparently made a derogatory statement about the intelligence level of Puerto Ricans and Ferris is said to have stated that only students from certain socio-economic backgrounds should be allowed to take courses such as advanced calculus and foreign languages led to complaints and, ultimately, to their investigation.

"We thought it was appropriate to include the reference to our report, but the follow-up to the complaints would not be facilitated by naming names," Zelda Holcomb, SED director of civil rights and intercultural affairs, said. "We want to encourage the district and the community to come together to resolve these conflicts."

* * *

2/2/92

State report leaves GASD staff in funk

By TERESA CUDA
Recorder News Staff

Some teachers in the Greater Amsterdam School District are upset about what one teacher calls "shoot-from-the-hip" recommendations in a state Education Department report released Wednesday.

Teachers and other staff at AHS Thursday expressed feelings of hostility and said negative publicity and misconceptions about the high school fueled the fire that led to the SED report.

"Many of the teachers will take the report to heart and they're genuinely going to be depressed - even despondent," said Amsterdam Teachers Association President Bruce Miseno.

* * *

Miseno said the SED report and its findings were hurtful and he accused the six state officials — who visited the district for three days in November — of conducting a superficial investigation into charges that minority students receive a substandard education.

* * * Page 77 of Exhibit A.

E-7: MOSS INTERROGATORY RESPONSE

GASD has tears, jeers for report

2/6/92 By TERESA CUDA/ Recorder News Staff

"Inaccurate, inconsistent, misrepresentations and self-professtations" are some of the terms Superintendent Arthur P. Cotugno used at a board meeting Wednesday night to describe a state report issued last week about the Greater Amsterdam School District.

"I am not pleased with the review, nor with the sequence of events or circumstances that led up to it – Amsterdam is not and has never been a second-rate educational system," Cotugno said in a prepared statement.

* * *

Several board members lashed out at *The Recorder* and at state Education Department officials. Board president Claire Ludwin said she cries when she thinks of the way the report criticized some of the school's programs and personnel.

"How could such a small group have so much power — what kind of hold do they have over the SED that they forced them to send the team here? I feel badly because they indicted the whole city, the school district and the teachers," Ludwin said, wiping away a tear.

Board member John Miller called the SED review a witch-hunt and said he blames *The Recorder* for many of the district's woes.

Page 81of Exhibit A

GASD criticisms refuted

State: Evaluation was on the mark

By TERESA CUDA **2/7/92**

Despite an avalanche of criticism, state Education Department officials stand behind what one official calls an impartial review of the Greater Amsterdam School District.

Superintendent Arthur P. Cotugno and some board members Wednesday night had ripping criticisms for the SED report released last week and many questioned the circum-stances that brought the SED team to Amsterdam in November.

"We stand behind our report," Michael Mostow, a special projects coordinator for the SED and the leader of the SED team said Thursday. "It is an impartial review of the district — it's thorough and it's honest."

Mostow said he was surprised at the sharp words directed at the report by Cotugno at the board meeting.

Cotugno told board members that the report contained inaccuracies, inconsistencies and misrepresentations and said that, overall, he was not pleased with the review.

"I am surprised at that — especially since we sent Mr. Cotugno a copy of the report a week before it was released and then sat down with him to go over it page by page," Mostow said. "We asked him to review it for accuracy and clarity -- we met for three hours -- and he found very few things he wanted to change."

Mostow said he is also aware that board President Claire Ludwin and others have accused SED officials of coming to Amsterdam with a pre-conceived notion of what they would find.

"If people on the board think we wrote the report to please anyone, then they are way off the mark," Mostow said. "We didn't write the report to please the Hispanic or the non-Hispanic population. We are experienced outsiders and we wrote about what we saw and what we know to be true."

Persico, Miller claim GASD snooping title

By TERESA CUDA
Recorder News Staff **2/7/92**

PERSICO

MILLER

* * *

"No, they gave an example of how a board member went to a principal and I seem to think that shoe fits me," Persico said. "In this particular situation I went to the principal and asked some questions."

Persico said he will have a few questions of his own if he finds out that the principal reported the situation to SED officials.

"If what I did was a problem and this person [the principal] was the one who said that to those state people, then I can guarantee that I'll have a lot more questions for her," Persico said. "I have my own problems with that."

GASD reaction surprises state

Most districts welcome probe

By TERESA CUDA **2/8/92**
Recorder News Staff

* * *

What makes Amsterdam stand out from the rest, according to SED officials is the suspicion which greeted the SED visit in Amsterdam and the hostility which still accompanies many Board of Education discussions about the SED report.

* * *

4/ 22/702

Recorder photo; Mitch Wojnarowicz
Members of the panel assembled to release the GASD's response to the state Education Department applaud the opening festivities by the Amsterdam High School band and majorettes.

E-7: MOSS INTERROGATORY RESPONSE

4/24/92

Recorder photo: Mitch Wojnorowicz
ATA President Bruce Miseno addresses board members at Thursday night's budget hearing.

Ferris,Ludwin rip racial repair plan

By.TERESA CUDA
Recorder News Staff

* * *

Board member Charles Ferris said Wednesday night that he is preparing a statement about some of his objections to the report.

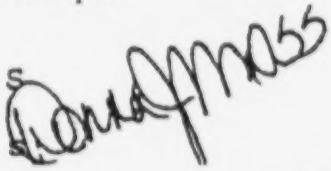
"I was surprised at some of the things in the report — I don't want to be too specific since many of the issues involve minorities — but I would say board members should be consulted first," Ferris said. "I believe the board has to approve the report - some of the recommendations be a problem for the board."

Page 99 of Exhibit "A".

E-7:MOSS INTERROGATORY RESPONSE

GREATER AMSTERDAM SCHOOL DISTRICT
OFFICE OF INSTRUCTION
MEMO

TO: Bert DeRose Principal



FROM:Donna J. Moss
Director of Instruction
DATE:September 18, 1991

I have reviewed the information regarding the placement of students into remedial programs at AHS. I have a number of concerns about the placement of students. There are a number of areas that need to be addressed:

1. ESL students who do not speak, read, and/or write English or who have minimum skills have been inappropriately placed in remediation.

2. Students who did not take the prerequisite coursework and the accompanying exams have been placed in remediation.

3. Students who have passed the required coursework and the accompanying exams have been placed in remediation even though they do not qualify for remediation.

4. Handicapped students have been placed in remediation without completion of district agreed upon referral forms or approval of the building principal and me

5. Students have been placed in remediation for whom there is no information as to why they have been placed in remediation.

These problems need to be addressed immediately and corrective action taken where necessary. The situation and information is outlined below for each remedial area.

* * *

Letter page 6

Would it be possible to receive this information by Friday, 20 September 1991? Resolving these placements is especially crucial in the event that student schedules have to be changed and students have to be placed in credit bearing academic courses; I am concerned that students will be behind three weeks in these classes due to possible inappropriate placements in remediation.

Thank you for your immediate attention to this matter.

cc: Art Cotugno
John Quatrini
Stan Dzikowicz
Jan Dyer
Gavin Murdoch
Abdel Sharifi

E-7:MOSS INTERROGATORY RESPONSE

HANCOCK & ESTABROOK
COUNSELORS AT LAW
1900 MONY TOWER I, P.O. Box 4976
SYRACUSE NEW YORK 13221-4976
TELEPHONE (315) 471-3151

May 12, 1992
Dr. Donna Moss 41 Arnold Avenue
Amsterdam, New York 12010

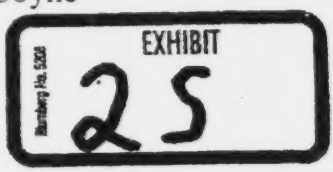
Dear Dr. Moss:

Pursuant to your request, I am writing to confirm the fact that in October of 1989 I met with you in my office to discuss certain facts in connection with your application for a position in Amsterdam. In that regard, you informed me that the Superintendent indicated in a telephone conversation with you that a member of the Board of Education had come to him and claimed to have had a dream your husband was 'black". The Superintendent asked you if this was true.

I had a colleague with experience in employment discrimination cases meet with us. He advised we keep a record of the inquiry (if it were true that your husband was black) because it would serve to confirm and document the fact you had concerns about these events in case problems arose either before or after your employment with the School District.

Very truly yours

W. Carroll Coyne



E-7: MOSS INTERROGATORY RESPONSE

GREATER AMSTERDAM SCHOOL DISTRICT

OFFICE OF INSTRUCTION MEMO

TO: Alan Brown, Superintendent of Schools

FROM: Donna J. Moss
Director of Instruction

RE: Assistant Director position

DATE: March 23, 1990

When we put the budget together several months ago, I requested that monies be put in the 1990-91 budget to fund the Assistant Director of Elementary Instruction position. This was not done.

As you are aware, my position is actually 3 positions (Director of Instruction, Assistant Director of Secondary Instruction, and Assistant Director of Elementary Instruction) and was done by 3 separate people last year. The responsibilities are immense and are also increasing. As a result, I am requesting again that monies be placed in the 1990-91 budget for an Assistant Director of Elementary Instruction.

I appreciate your consideration in this matter.

ems
cc: Art Cotugno
Charlie Caruso

Donna

This position has not been budgeted nor is it likely that the Board would be willing to include it in the 1990-91 budget. If you make a proposal to the Board, what do you think your chances are?

Appendix Note: Above handwritten note reads as follows:
This position has not been budgeted nor is it likely that the Board would be willing to include it in the 1990-1991 budget. If you make a proposal to the Board, what do you think your chances are?

E-7:MOSS INTERROGATORY RESPONSES

[Moss Response to GASD Interrogatory #14]

* * *

Cotugno Required Me To Write-Up Minutes of Meetings

22. After each respective meeting on 22 July 1991, 19 August 1991 (Exhibit "7W"), 2 October 1991, and 11 October 1991, Arthur Cotugno told me (who was the only female Director and the only Ph.D. in the meetings) to prepare the minutes of these administrators' meetings that I was attending -- even though he had taken his own notes of the meeting and even though two of the meetings were about John Quatrini's mistakes in the placement of handicapped and ESL students. Copies of the 22 July 1991, 2 October 1991, and 11 October 1991 minutes are annexed hereto and marked Exhibit "8S".

23. Arthur Cotugno did not during this span of time (22 July - 11 October 1991) require any of the non-interracially married male Directors to write up minutes of any meetings at which I was present.

24. I believed then and I now assert on the basis of facts and information in this Statement that Cotugno's acts of having me write-up the minutes of meetings was specifically intended by him to insult, demean, mock, and ridicule me and my status as a female Director by making me assume a stereotypical "female" secretarial function, and it did in fact have that effect on me.

25. I also believed then and do now assert that Arthur Cotugno also intended by these acts to humiliate and demoralize me and to break my spirit and discourage me from continuing to rigorously pursue the student placement problem.

26. In his 31 March 1992 Division of Human Rights RDDIR (Exhibit "E", p. 7, item 12, parag. 3) Cotugno tries to explain his having required me to prepare minutes of meetings by saying I "took notes" in meetings which I attended.

E-7:MOSS INTERROGATORY RESPONSES
[Moss Response to GASD Interrogatory #14]

27. In the first place, my meeting "notes" are handwritten, non-formalized and were for my own use and records (as were the meeting "notes" of the other administrators, including Arthur Cotugno's own).

28. The minutes which I was required by Superintendent Cotugno to prepare were formalized, typed, and given by me to Arthur Cotugno (as he directed) as formal Minutes of the Meeting.

29. When I realized that a pattern had developed and that Arthur Cotugno was calling upon me again and again to prepare the minutes, specifically on 19 August 1991, 2 October 1991, and 11 October 1991, I deliberately specified on the face of the minutes:

"Below are the minutes of 19 August 1991 meeting you requested.
Meeting - Art Cotugno, John Quatrini, Donna Moss, Claude Palczak."

E-7: MOSS INTERROGATORY RESPONSE

STATE OF NEW YORK
COUNTY OF ULSTER

DONNA JEANNE MOSS, being duly sworn, deposes and says that she is the Plaintiff in the within action; that she has produced acting pro se and has read the foregoing Moss Responses to the GASD Defendants' Interrogatories directed to Donna Jeanne Moss and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

Donna J. Moss, Ph.D.

Sworn to me this
17 th day of June 1997

LORRAINE Q MERRIHEW
Notary Public, in the State of New York
Qualified in Ulster County No. 4982829
My Commission Expires June 10, 1999.

E-8: GASD INTERROGATORY RESPONSES

District Docket No.353

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS

Plaintiff,

-against-

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM et al,

95-CV-1356

Defendants.

The defendant, Arthur P. Cotugno, by and through his attorneys, Ryan & Smallacombe, LLP, as and for a response to the amended interrogatories of the plaintiff, responds as follows:

AMENDED INTERROGATORY NO. 32:

Set forth each and every reason that plaintiffs employment was terminated, and each and every fact considered by the defendants in deciding to terminate plaintiffs employment, and further set forth

a. the name, business and residence address, and telephone number of any witness to the decision to terminate;

b. an identification, with such particularity as would be required in a motion to produce, of any documents relating to his decision to terminate.

c. the name, business and residence address, and telephone number of the present custodian of any document identified in Arthur P. Cotugno's answer to the foregoing subpart of this interrogatory.

RESPONSE TO INTERROGATORY NO. 32:

The Defendant objects to this Interrogatory on the grounds that it is overbroad. Notwithstanding the foregoing, the reasons for the defendant Arthur Cotugno's recommen-

dation to the Board of Education of the Greater Amsterdam School District not to renew the contract of employment between the School District and Dr. Moss are set forth in a letter dated June 17, 1992, a copy of which is attached hereto as Exhibit "1". In that letter various reasons are cited for that decision, including issues concerning plaintiff's performance competency, concerns over areas of curriculum, concerns regarding issues of time management, and time spent away from the District, and finally because of issues with regard to plain-tiff's interpersonal relationships with other individuals and employees within the school district.

With regard to issues concerning curriculum, after the defendant Arthur Cotugno assumed the position of Interim Superintendent in July of 1991, plaintiff was specifically requested to review and provide recommendations concerning the school district's gifted and talented educational programs and the alternative education program at the School District High School. Plaintiff failed to take action during the year in a timely fashion with regard to both of these requests. Copies of documents pertaining to the foregoing are attached hereto as Exhibit "2".

Also, defendant Arthur Cotugno raised issues of concern with the plaintiff regarding her direct involvement with chairpersons within the school district, as opposed to permitting school principals to be her intermediary.

Dr. Moss was unfamiliar with curriculum terms and format. She was unsure of the interpretation of information obtained concerning curriculum and failed to employ the expertise of subordinates knowledgeable in particular areas. The plaintiff would not encourage development of dialogue to arrive at conclusions but would instead choose to impose solutions on subordinates without adequate explanation nor knowledge of format and content of curriculum. Based upon the foregoing and plaintiff's professional and educational experience plaintiff did not appear to possess adequate

knowledge or expertise on issues of curriculum

Again, with respect to curriculum, during her employment the Greater Amsterdam School District had been planning to open a new middle school in September of 1992. The plaintiff had been responsible for much of the middle school planning activity; plaintiff failed to sufficiently address curriculum and its content in areas specifically within her duties and responsibilities.

With regard to issues of time management, plaintiff, upon information and belief, had taken in excess of 75 days away from her duties within the District in her three years of employment to attend non-district related functions and conferences which interfered with her day to day responsibilities as Director of Instruction. Defendant is in the process of obtaining documentation with regard to such and will supplement this response.

With regard to plaintiff's interpersonal relations, the defendant Arthur Cotugno was personally aware of, or was made aware of, personal issues that existed between the plain-tiff with the following individuals:

(1). Richard Jankunas - Mr. Jankunas was the Assistant Principal for the Amsterdam High School during the plaintiffs employment with the District. Mr. Jankunas rendered the opinion that the plaintiff had difficulties with her subordinates and also took a dictorial attitude toward her subordinates;

(2) Joanne Spagnola — was the stenographer to the Superintendent of Schools during the time period of the plaintiff's employment with the District. Ms. Spagnola has rendered the opinion that the plaintiff was unorganized, particularly with regard to issues concerning the submissions of grant applications by the District for State and/or Federal funding;

(3) Gavin Murdoch — Mr. Murdoch was Department Chairman of Social Studies during the time of plaintiff's employment with the District. Mr. Murdoch rendered the opinion that the plaintiff talked down to people including subordinates; often used names and positions of people who were not affiliated with the District to improperly establish her credibility; and that the plaintiff would take credit for work done or completed by others in an improper fashion;

(4) Jane Steubing — Dr. Steubing was the Principal of the Elementary School during the time of the plaintiff's employment with the District. Dr. Steubing rendered the opinion that the plaintiff was difficult to work with, and that Dr. Moss was domineering and dictorial. Also, Dr. Steubing rendered the opinion that Dr. Moss had an insufficient knowledge of curriculum with respect to Kindergarten through Sixth Grades. Copies of documents pertaining to the issues raised by Dr. Steubing concerning the plaintiff are attached as Exhibit "3";

(5) Abdel Sharifi – Mr. Sharifi was the Chairman of the Science Department during the time of the plaintiff's employment with the District. Mr. Sharifi rendered the opinion that he was treated unfairly by the plaintiff with respect to evaluations, that she was degrading to him, and that she acted in a dictorial manner. Copies of documents pertaining to issues between Mr. Sharifi and the plaintiff are attached as Exhibit "4";

(6) Jan Dyer – Ms. Dyer was the Chairman of the English Department during the time of the plaintiff's employment with the District. Ms. Dyer rendered the opinion that the plaintiff delegated a significant amount of the work that was within the Director of Instruction's duties and responsibilities to chairpersons within the District during her employment; that the plaintiff would talk down to people and use the names and positions of persons not associated with the District in a condescending manner and that she would take credit for work done-by other individuals;

(7) Ronald Limoncelli – Mr. Limoncelli was the Interim Director of Personnel during the time period of the plaintiff's employment with the District. Mr. Limoncelli rendered the opinion that the plaintiff inappropriately disciplined subordinates; that she failed to help him with the curriculum for Kindergarten through Fifth grade health courses; and that she had issues with regard to motivating others;

(8) John Giovanni — Mr. Giovanni was the Coordinator of Health and Education during the plaintiff's employment with the District. Mr. Giovanni expressed the opinion that the plaintiff was not involved in the curriculum of health even though it was under her duties and responsibilities; that she was unable to motivate others; and that she was unorganized and failed to manage her time efficiently;

(9) John Quatrini — Mr. Quatrini was the Director of Special Education during the time of the plaintiff's employment with the District. Mr. Quatrini expressed that he had a poor working relationship with the plaintiff and that the plaintiff was difficult to deal with;

(10) Paul DiMascio — Mr. DiMascio was the Chairperson of Vocational Studies during the time of the plaintiff's employment with the District. Mr. DiMascio expressed the opinion that the plaintiff did not have a good knowledge of the curriculum within Vocational Studies; that the plaintiff was dictorial, and failed to cooperate with her fellow workers; and that she took credit for other people's work. Copies of documents pertaining to Mr. DiMascio and the plaintiff are attached as Exhibit "5";

(11) Pamela Ruff — Ms. Ruff was a typist with the School District during the time period of the plaintiff's employment with the District. Ms. Ruff had complained that she was inappropriately disciplined and degraded by Dr. Moss in performing her duties;

(12) Charles Caruso - Mr. Caruso was the Finance Director during the time of the plaintiff's employment with the District. Mr. Caruso had difficulties with the plaintiff concerning budget issues which included an issue concerning overspending the School District's textbook account;

(13) Margery Diamond Zucker — Ms. Zucker was employed at the Instructional Materials Center during portions of plaintiff's employment with the District. The defendant became aware that Ms. Zucker had difficulties and complaints in the manner in which she was treated by plaintiff. Copies of documents pertaining to the plaintiff and Ms. Zucker are attached hereto as Exhibit "6";

In addition to the foregoing, the defendant states that the plaintiff was resistant to constructive criticism and/or reacted in an unwarranted fashion to attempts to call to her attention issues concerning her performance and duties within the District See for example Exhibit "7" attached hereto.

The defendant reserves the right to supplement this response until further discovery is conducted and in accordance with the Federal Rules of Civil Procedure.

RESPONSE TO INTERROGATORY NO. 53:

In June of 1992 the School District reorganized the Office of Instruction. As a result two new positions were created: 1) Director of Secondary Instruction; and 2) Director of Elementary Instruction.

a The duties and responsibilities of these newly created positions are set forth within Exhibit "11".

b. The defendant objects to this interrogatory on the grounds that it seeks information for time periods not at issue in this lawsuit. Notwithstanding this objection the defendant

states that in 1992 the position of Director of Elementary Instruction was filled by Mr. Larry Trzaskos; the position of Director of Secondary Instruction was filled by Ms. Janice Dyer. Both continue to be employed with the District.

c. Mr. Larry Trzaskos — white, male, dob: 7/11/43;
Ms. Janice Dyer — white, female, dob: 11/25/45;

d. Mr. Trzaskos: 7/2/92; Ms. Dyer: 7/2/92;

e. See Exhibit "11".

f. Mr. Trzaskos: $61,316.00; Ms. Dyer: $56,717.00;

g. Both of the aforementioned positions reported directly to the Superintendent of Schools.

h. Larry Trzaskos is the current Superintendent of Schools for the Greater Amsterdam School District; Janice Dyer is the Director of Secondary Instruction.

i. Not applicable.

j. The plaintiff is referred to the State Education Law and applicable regulations with respect to the duties and responsibilities of the Superintendent of Schools. The duties and responsibilities of the Director of Secondary Instruction are set forth within Exhibit "11". [...]

VERIFICATION

STATE OF NEW YORK))ss.:
COUNTY OF)

ARTHUR P. COTUGNO, being duly sworn, deposes and says that he is the Defendant in the within action; that he has read the foregoing Response to Plaintiff Interrogatories Directed to Arthur P. Cotugno and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Arthur P. Cotugno
ARTHUR P. COTUGNO

Sworn to before me this
10th day of May, 2000

NOTARY PUBLIC-STATE OF NEW YORK

42.2135.Intfl404.doc

MARIO D. COMETTI
Notary Public, State of New York
No. 01C04987433
Qualified in Albany County
Commission Expires October 15, 20__

E-9: TIME OUT OF DISTRICT AFFIDAVIT
District Docket No.354

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS,

Plaintiff,

- against - Civil Action No. 95-CV-1356/ (LEK)(RWS)

THE ENLARGED CITY SCHOOL DISTRICT OF' THE CITY OF AMSTERDAM

Defendants

MOSS AFFIDAVIT RE TIME OUT OF DISTRICT

I, Donna J. Moss, being duly sworn, state and depose as follows:

122. The GASD Individual Employee Attendance Record recorded the time spent out of the District only in .5 day amounts or 1.0 day amounts; as indicated by paragraphs 26, 37, 45, 50, 70, 81, 87, 98, 113, and 117 supra and/or by GASD time recording policy in effect during the 1991-1992 school year.

123. If I attended a meeting for 1 hour, I was charged a half day (which is 4 hours) amount of tine; four hours or more at a meeting was charged as a full day of time (8 hours).

124. I spent 134.5 hours (including travel time) at meetings (i.e., 16.8 days over 12 months); I was charged for 164 hours (i.e., 20.5 days) as indicated by the GASD Individual Employee Attendance Record printout on time out of district, a true copy of which is annexed hereto and marked Exhibit "2H"; therefore my actual time used is 4 days less than the time I was charged.

125. At the end of both the 1991 and the 1992 school years, I had unused vacation time on the books totaling 5.5 days for 1991 and 6.0 days for 1992 respectively.

E-9: TIME OUT OF DISTRICT AFFIDAVIT

126. My unused vacation time could not be carried over to the next year in an amount exceeding 5 days; .5 of the vacation days from 1990-1991 were thus lost because they could not be carried over into 1991-1992 and I had 6.0 days of unused vacation time for 1991-1992.

127. My 135.5 hrs [i.e., actual hours as opposed to charged hours] is 6.5 vacation days or 52 hours less than was actually calculated such that my real-time use was 83.5 hours or approximately 10.4 days from 1 July 1991 -30 June 1992, which over that 12 month period averages to somewhat less than .8 days per month of time spent away from the District at meetings and conferences.

* * *

Donna J. Moss, Ph.D.

Sworn before me on this
19th day of 2001

Notary Public

ANNA P. GOODWIN-GREMER
Notary Public, State of New York
Reg #01GO5025241
Qualified in Ulster County
Commission Expires March 21, 2002

E-9: TIME OUT OF DISTRICT AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
Superintendent's Office

TO: Donna

DATE: 2/26/92

The following information is for your, information and/or action.

Attime if you can or would like to. Pat

AGENDA
SCHOOL AND BUSINESS ALLIANCE OFFICE
DEVELOPMENT COMMITTEE
MEETING
February 27,1992
SABA OFFICE- GLOVERSVILLE

It is resolved that the Alliance Development accept the minutes for the meeting of January 30, 1992.
Motion
Second
Approval of Monthly Budget Report,
It is resolved that the Alliance Development Committee accept the monthly budget report for the period January 1, 1992 to January 31, 1992.

EXHIBIT P

E10 MIDDLE SCHOOL AFFIDAVIT
District Docket No.355

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS,
Plaintiff,
- against-
THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM et al.

Civil Action No. 95-CV-1356 (LEK)(RWS)

Defendants

MOSS AFFIDAVIT RE. THE MIDDLE SCHOOL

I, Donna J. Moss, being duly sworn, state and depose as follows:

147. There was in fact no full cycle of curriculum planning and writing during my 1 July 1991 - 14 February 1992 evaluation period for Arthur Cotugno to evaluate me on because of the way that the planning and writing are staggered such that planning takes place in the winter and spring and the writing takes place the following summer [Exhibit "4T", page 2, Curriculum Writing Timetable] as is demonstrated by the following chart:

Cycle 1 planned under Brown ,
Jan.- June 1990 =========> written summer 1990

Cycle 2 planned under Brown,
Jan.- June 1991 =========> written summer 1991

Cycle 3 planned under Cotugno,
Jan.-June 1992 =========> I was terminated in 1992 on 17 June before the summer 1 July-August 1992 curriculum writing period.

E-10: MIDDLE SCHOOL AFFIDAVIT

148. K-12 curricula, including Middle School [i.e., grades 6-7-8] curricula, were planned for and written in each school year for which there was a complete planning and writing cycle since I became Director of Instruction as detailed and documented in paragraphs 149-151 [...] that follow (including cost and budget information).

Subject	Amount Expended	Document Annexed
1. Speech	750	Exhibit "4Y"
2. Creative Writing Workshop	750	Exhibit "4Z"
3. Journalism	750	Exhibit "5A"
4. Advanced Placement English Literature and Composition	750	Exhibit "5B"
5. Computer Systems, Applications and Programming	750	Exhibit "5C"
6. Unified Science	1000	Exhibit "5D"
7. English Update	750	Exhibit "5E"
8. Psychology	750	Exhibit "5E-1"
9. Indians in American History	750	Exhibit "5E-2"
TOTAL:	$7000	

150. The following curricula were written in 1990-1991:

Subject	Amount Expended	Document Annexed
1. Studio in 3-D	$720	Exhibit "5F"
2. Drama I	750	Exhibit "5G"
3. Advanced Placement Computers	720	Exhibit "5H"

4. Advanced Studio Art	720	Exhibit "5I"
5. K-3 Art (two people)	1,440	Exhibit "5J"
6. Gold Band/Purple Band/ Music 7/Music 8 (three people	2160	Exhibit "5K"
7. K-6 Science Course of Study	personnel	Exhibit "Y" & "Z"
8. K-6 Social Studies Course of Study	personnel	Exhibit "2J" & "2K"
9 K-12 Health - $1200	Grant + personnel	Exhibit "5L"
TOTAL:	$6,510	

151. The following curricula were written in 1991-1992 (summer 1991):

Subject	Amount Expended	Document Annexed
1. Computer K-6 (four people)	$1760	Exhibit "5M"
2. Gifted and Talented grades 2-6 (two people; school year; after school)	66	See Affidavit Re. G & T, Exhibit "2L"
3. Global Studies (two people)	1500	Exhibit "5N"
4. History of Technology (four people)	2385	Exhibit "5O"
TOTAL:	$5,711	

152. On 23 October 1991 I met with Middle School Principal Palczak and High School Principal DeRose

regarding the development of budgets, including curriculum writing proposals for curriculum to be written during the summer 1992, which I then discussed with the chairpeople on 23 October 1991, as indicated by the following excerpt from the minutes of the 23 October 1991 meeting,

> "Chairpeople will develop their budgets with Claude and Bert. These will then be forwarded to me by Claude and Bert."

and by a subsequent meeting on 7 January 1992, true copies of which are annexed hereto and collectively marked Exhibit "5P".

153. Arthur Cotugno received a copy of the minutes of the 23 October 1991 chairpersons' meeting.

154. I presented the following courses to Arthur Cotugno to fund for curriculum writing during the summer of 1992:

Subject Area	Amount Requested
History of Technology	$825
Compilation of K-12 library instructional materials	880
Science 7	750
Technology Grade 6	264
Home and Career Skills Grade 6	264
Middle School Art	2,000
Middle School Music	750
U.S. Government	1,500
Computer 6	234
Aquatics	750
	Total: $8,217

as indicated by my 16 January 1992 meeting notes, a true copy of which is annexed hereto and marked Exhibit "5Q" and by paragraphs 141-144 *supra*.

E-10: MIDDLE SCHOOL AFFIDAVIT

155. Despite the fact that 70 percent [7 out of the 10 or $5,012 of the $8,217] of the course curricula which I presented to Defendant Cotugno for curriculum writing were specifically Middle School (i.e., grades 6, 7, and/or 8) courses, Arthur Cotugno refused to fund all of said courses.

156. Arthur Cotugno provided the lowest funding for my curriculum writing budget of any period of my employment in the GASD as indicated by the following chart:

YEAR	AMOUNT PROPOSED	AMOUNT APPROVED BY SUPT.	TEACHER DEBIT	AMOUNT WRITTEN
1989-1990	$9,630	$9,630 (Brown)	$2,630	$7,000
1990-1991	$11,260	$11,260 (Brown)	$4,750	$6,510
1991-1992	$ 5,000	$5,000 (Brown)	$ 0	$5,711
1992-1993	$ 8,217	$3,000 (Cotugno)	I terminated 30 June 1992	

as indicated by paragraphs 149-151 *supra* and Exhibits "5S" and Exhibit "5T", respectively.

157. GASD Superintendent Alan Brown had always fully funded my curriculum writing requests, as indicated by the Chart in paragraph 156 *supra*.

158. Arthur Cotugno's underfunding of my proposed curriculum writing budget was the first time in my employment at the GASD that the GASD Superintendent of Schools refused to fully fund my curriculum writing budget, as indicated in the Chart in paragraph 156 supra.

159. At a 16 January 1992 budget meeting Arthur Cotugno cut my curriculum writing budget request to $5,233, which even at that figure was the lowest amount ever allocated to curriculum writing since I had started work at the GASD, as indicated by my notes of the 16 January 1992 meeting [budget line "2010.1305.04 - Curriculum Writing"], a true copy of which is annexed hereto and marked Exhibit "5Q".

E-10: MIDDLE SCHOOL AFFIDAVIT

160. At a 22 January 1992 budget meeting, Arthur Cotugno restored some of my funding, bringing it up to $6,389, but still refused to completely fund my requested curriculum writing budget, as indicated by my notes of the 22 January 1992 meeting [budget line "2010.1305.04 – Curriculum Writing"], a true copy of which is annexed hereto and marked Exhibit "5R".

161. At an 8 April 1992 budget meeting, Arthur Cotugno cut the amount that he had put back in my curriculum writing budget in the 22 January 1992 meeting -- he further cut my 8,217 dollar curriculum funding request to 3,000 dollars, as indicated by my notes of the 8 April 1992 budget meeting [budget line "2010.1305.04 - Curriculum Writing"], and by the 10 June 1992 GASD Budget computer printout [budget line "2010.1305.04 - Curriculum Writing"], true copies of which are annexed hereto and marked Exhibits "5S" and "5T", respectively.

162. At the 8 April 1992 budget meeting I stated to Arthur Cotugno that his cutting of the curriculum writing budget made it impossible to have all the proposed curriculum written that summer and since I was being held accountable for curriculum, therefore it [the cut] should not impact negatively on my performance evaluation, as indicated by my notes of the 8 April 1992 meeting [Exhibit "5S" at page 3].

163. Out of a GASD budget of approximately 28 million dollars [Exhibit "5U"] and an Office of Instruction budget of over 600,000 dollars [Exhibit "5V"], Arthur Cotugno refused to allocate $5,217 dollars [i.e., $8,217 minus the $3,000 he approved] so that courses in my predominantly Middle School curriculum writing budget request could be fully funded and written, as indicated by the GASD Budget computer printouts, true copies of which are annexed hereto and marked Exhibits "5U" and "5V", respectively.

E-10: MIDDLE SCHOOL AFFIDAVIT

164. Even though I reminded Arthur Cotugno at the 8 April 1992 budget meeting that the Aquatics curriculum for the new Middle School pool had to be written out of the monies I was requesting, Arthur Cotugno still refused to fully finance my predominantly Middle School curriculum writing budget requests -- and 3,000 dollars was the final curriculum writing funding that Arthur Cotugno approved for summer 1992 [Exhibit "5S", "2010.1305.04 - Curriculum Writing"].

165. With respect to the GASD Board's mandated zero increase austerity budget, Arthur Cotugno was given full authority and discretion to recommend priorities and options, and full funding of my $8,217 curriculum writing request was not one of Arthur Cotugno's recommended priorities and options.

166. No Middle School curriculum was written after my termination during the period of 30 June 1992 through 1 September 1992 (which was the date that Arthur Cotugno alleges that he believed the new Middle School addition was going to open).

167. In each year (October 1989 - 1990, 1990 - 1991, and 1 July 1991 - 30 June 1992) of my Directorship, all the courses which "should" have been "reduced to paper" were as of those times, in fact, "reduced to paper" as indicated by paragraphs 147-166 supra.

168. In each year of my employment with the GASD I recommended the funding of all worthy curriculum proposals until the money in my curriculum writing budget was completely expended or encumbered, as indicated by paragraphs 147-165 supra.

E-10: MIDDLE SCHOOL AFFIDAVIT

169. The course areas mentioned in Arthur Cotugno's 31 March 1992 RDDIR were either already written, appropriately scheduled by Department Chairpersons to be written as provided for in the 5-Year Plans, and/or were presented to Arthur Cotugno by me in my 1992-1993 budget requests for courses to be funded for Middle School curriculum writing during the summer of 1992, as indicated by paragraphs 14-32, paragraphs 150-153, and paragraph 154 supra.

* * *

Donna J. Moss, Ph.D.

Notary Public
ANNA P. GOODWIN-GREMER
Notary Public, State of New York
Reg. #01 G05025241
Qualified in Ulster County
Commission Expires March 21, 2002

Sworn to before me on this 19th day of April 2001

E-11:ALTERNATIVE ED. PROGRAM AFFIDAVIT
District Docket No.356
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
DONNA JEANNE MOSS,

Plaintiff,
Civil Action No. 95-CV-1356
(LEK)(RWS)

- against -

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM

Defendants

MOSS AFFIDAVIT RE
THE ALTERNATIVE EDUCATION PROGRAM

60. An evaluation report was, on my own administrative initiative and request and for my own use and Office of Instruction files, completed of the Project Pride Program by Dick Jankunas and the Alternative Education Program staff for the 3rd Quarter ending April 1992 as evidenced by the copy of the April 1992 Project Pride Evaluation Report, a true copy of which is annexed hereto and marked Exhibit "X".

73. The 23 June 1992 Jankunas letter [E-8: Exhibit "A" at page 2 in Exhibit 2 of Arthur Cotugno's response to my Interrogatory 32] does not [as alleged at page 3 of Cotugno's response to my Interrogatory 32] "pertain" to any alleged "review and recommendations" allegedly requested of me by Arthur Cotugno, but rather "pertains" to, and only to, the 3rd Quarter Alternative Education Evaluation Report done by Dick Jankunas at my own initiative and request.

74. I did not tell Richard Jankunas to send me a cover "letter".

75. I did not tell Richard Jankunas to "post date" a cover "letter".

76. I did not use the words "post date" in any conversation with Richard Jankunas.

77. I told Richard Jankunas to provide me a copy of the, as of then undated, Third Quarter Alternative Education Report and to date as "April" a "cover sheet" [i.e., a front page containing the Title] of the Report.

78. Arthur Cotugno did not subsequent to receiving Jankunas' letter consult me to find out what I had to say in response to allegations contained in Richard Jankunas' 23 June 1992 letter.

79. As of 17 June 1992 [the date of Arthur Cotugno's letter advising me that he intended to recommend that my contract not be renewed] Richard Jankunas' allegation that in a 19 June 1992 telephone conversation I allegedly prevailed upon him to "post date" a cover "letter" had not yet been made, the 19 June 1992 Jankunas/Moss phone conversation itself had not yet even taken place, and Arthur Cotugno was not [therefore] referring to any such allegations or to any facts or occurrences related to any such allegations when he wrote the 17 June 1992 termination letter.

* * *

Donna J. Moss

Donna J. Moss, Ph.D.

Sworn before me on
this 19th day of
April 2001

Anna G. Goodwin Gremer

Notes Public

/

ANNA GOODWIN GREMER
Notary Public, State of New York
Reg. #01G05025241
Qualified in Ulster County
Commission Expires March 21, 2002

E-11:ALTERNATIVE ED. PROGRAM AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
OFFICE OF INSTRUCTION

PROJECT PRIDE
EVALUATION REPORT

April, 1992

Submitted by:

Dr. Donna J. Moss
Director of Instruction
Greater Amsterdam School District

Mr. Richard Jankunas
Project Pride Coordinator
Assistant Principal
Amsterdam High School

Mr. Andrew Clauson
Project Pride Teacher
Amsterdam High School

E-11:ALTERNATIVE ED. PROGRAM AFFIDAVIT

THE STATE EDUCATION DEPARTMENT/THE UNIVERSITY OF THE STATE OF NEW YORK/ALBANY. N.Y 12234

June 25, 1992

Mr. Arthur Cotugno
Amsterdam City Schools
11 Liberty Street
Amsterdam, New York 12010

Dear Mr. Cotugno:

* * *

In our follow-up visit in 1992, as reported above, we found that a bilingual Guidance staff person is now available at the high school level, as were translators. Furthermore, six Hispanic LEP students are participating in a major dropout prevention program, "Project Pride," and are attending monthly meetings with teachers acting as mentors.

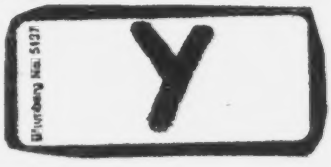
* * *

Sincerely,

Laurie Wellman

Laurie Wellman, Supervisor Division of Bilingual Education

cc: Dr. Donna Moss
Dr. Lester Young
Carmen A. Perez Hogan



E-12: GIFTED AND TALENTED PROGRAM AFFIDAVIT

District Docket No. 357

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS,

Plaintiff,

Civil Action No.
95-CV-1356

-against-..... (LEK)(RWS)

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM et al

1. As of 1 July 1991 when Arthur Cotugno became Interim Superintendent, The Gifted and Talented Program had written goals, objectives, and an evaluation procedure specifically and unambiguously designated as such, as indicated by the 30 October 1989 introductory note from Tim McKnight to me and at pp. 1 & 3 under the cover of his 30 October 1989 note, true copies of which are annexed hereto and collectively marked Exhibit "A".

29. In a 27 March 1991 memo, long before there was any State Education Department investigation of and Report on discrimination or a GASD Response thereto, I gathered data and explored ways to get more qualified Hispanic and minority students into the Gifted and Talented Program. Copy of my 27 March 1991 memo and response annexed hereto and marked Exhibit "0".

40. In the 25 July 1991 meeting, I told Arthur Cotugno that the Gifted and Talented Program did in fact have goals and objectives and explained to him in general terms that they consisted of developing the students' critical thinking and problem-solving skills, creativity, and capacity to independently learn and independently solve problems.

41. In the 25 July 1991 meeting, after I told Arthur Cotugno that the Gifted and Talented Program had goals and objectives, he, continuing in a hostile badgering fashion, asked whether there was an evaluation plan for the Gifted and Talented Program.

42. In response to Arthur Cotugno's question cited in paragraph 41 supra I said affirmatively that the Program did have an evaluation plan, and at that point in the conversation I got the Gifted and Talented Program file folder from my office and showed Arthur Cotugno that the Gifted and Talented Program had:

52. At the 13 September 1991 meeting, Ray Draus answered Arthur Cotugno's questions, reviewed the history of the Gifted and Talented Program since its inception in 1982, and discussed the Gifted and Talented Program in great detail with Arthur Cotugno, including the specifics of how the Gifted and Talented Program "activities" implemented the Program's Goals and Objectives and how the Program was evaluated by the teachers and the students.

53. At the 13 September 1992 meeting, I reviewed materials describing Courses of Study with Arthur Cotugno, true copies of which are annexed hereto and marked Ex. "Z".

54. At the 13 September 1992 meeting, I reviewed the Gifted and Talented Program folders with Cotugno which included the materials indicated in paragraphs 1-2, 8-10, and 25-28 supra. The Gifted and Talented Program had written goals, objectives, and an evaluation procedure specifically and unambiguously designated as such, as indicated by the 30 October 1989 introductory note from Ray Draus to me and at pp. 1 & 3 of the GASD Gifted and Talented Program summary outline provided to me by Ray Draus under the cover of his 30 October 1989 note, true copies of which are annexed hereto and collectively marked Exhibit "A".

98. Other than the completion of a year end evaluation [as indicated in paragraph 55 supra], a Course of Study [as indicated in paragraph 55 supra], and the Budget Impact Statement [as indicated in paragraphs 72-80 supra], Arthur Cotugno did not [as he alleged at p. 3 of his 10 May 2000 Response to my Interrogatory 32] either in words or substance

"request that I review and provide recommendations concerning" the Gifted and Talented Program.

104. The 12 August 1991 memorandum [E-8: Moss Affidavit Re GASD Interrogatory Responses, Attachment "1" (Arthur Cotugno's response to my Interrogatory 32), at page 1 in Exhibit 2], does not [as alleged at page 3 of Cotugno's response to Interrogatory 32] "pertain" to any alleged "review and recommendations" concerning the Gifted and Talented Program allegedly requested of me by Arthur Cotugno but rather "pertains" to Arthur Cotugno's counterfactual and completely discredited allegations which he made in the 25 July 1991 meeting, as indicated by paragraphs 1-2 and 8-10 supra.

Donna J. Moss

Donna J.Moss

Sworn to before me on this
19th day of April 2001

Anna P. Goodwin-Gremer
Notary Public

ANNA GOODWIN GREMER
Notary Public, State of New York
Reg. #01G05025241
Qualified in Ulster County
Commission Expires March 21, 2002

RECEIVED

OCT 30 1989
GREATER AMSTERDAM
SCHOOL DISTRICT
PROGRAM SERVICE UNIT

Dr. Moss

Knowing how hectic your schedule must be, I've enclosed a general outline of our Talented/Gifted Program to look at during your spare time. (If you have any). When the smoke clears we can meet at your convenience. Welcome to our district!

Tim McKnight

E-12: GIFTED AND TALENTED PROGRAM AFFIDAVIT

GIFTED/TALENTED PROGRAM OUTLINE

PROGRAM 2-6

Pull out - Revolving Door Model

ITINERANT TEACHERS

7 schools - contact time based on scheduling,

PROGRAM GOAL

Provide special individualized enrichment and stimulus. Teaching the student to learn for himself/herself.

OBJECTIVES

- To develop those skills and abilities that are unique to each student in the program.
- To facilitate learning process for development of individual and small group investigations and products.
- To develop in students the ability to think creatively, logically, solve problems and learn independently.
- To develop higher level thinking skills, creativity, and divergent thinking skills.

IDENTIFICATION - SCREENING PROCEDURE

Combination. of:

Teacher nomination

Taks commitment, above average ability, creativity.

I.Q. scores

Achievement test score

Appendix Note: This is the general outline of a larger document which goes on to detail the information in the outline.

E-12: GIFTED AND TALENTED PROGRAM AFFIDAVIT

EVALUATION

Assessment of the program will be based on two criteria

Subjective -

Teacher will assess knowledge of skills, participation, motivation creativity and higher level thinking skills

Objective -

Teacher will assess students' projects, reports, demonstrations, presentations and units based on individual educational plans.

E-12: GIFTED AND TALENTED PROGRAM AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT

OFFICE OF INSTRUCTION

MEMO

TO: Ray Draus
Tim McKnight

FROM: Donna J. Noss
Director of Instruction

DATE: March 27, 1991

I would appreciate it if you would submit a list by building of the students that are in your program.

Please include the following information about each student: name, grade, date of birth, ethnic background, criteria used for program selection (include test name, test score, teacher recommendation etc.). Please submit this information by Friday, 12 April 1991.

If you have any questions please feel free to call me. Thank you for your cooperation.

ems

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

District Docket No 358

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK Civil Action No.

DONNA JEANNE MOSS, 95-CV-1356

Plaintiff, (LEK)(RWS)

against

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM

Defendants

AFFIDAVIT RE INTERPERSONNAL RELATIONSHIPS

369. In a District where employees through their aggressive unions did not hesitate to file grievances against administrators who they felt had acted improperly toward them, Margery Zucker never filed any grievance(s) against me -- and neither did any of the other employees who Arthur Cotugno cites. [Exhibits "12U" and "12V".] [¶¶122-131 supra and 507 infra.]

526. The Office of Instruction has many budget lines in its overall budget, as indicated by the printout, a true copy of which is annexed hereto and marked Exhibit "12D". Shortly after I was assigned the duties of recently-terminated Coordinator of Instructional Materials Center Margery Zucker [E-2: ¶¶13-14], IMC staff coded and charged the purchase of textbooks to the Office of Instruction textbook budget line — i.e., the money in the textbook budget line was allocated and approved by the Board of Education and the District was reimbursed these monies upon filing by the Business Office of state aid reimbursement forms. Once the textbook monies were spent, books were purchased out of the other appropriate subject area lines in my Office budget (e.g., science textbooks would be taken out of the science budget line, etc.).

528. Textbooks may be charged to either of two types of accounts: (1) the account entitled "textbooks" or (2) a subject matter account (e.g., Math, Science, etc.). All that happened was that I charged textbooks to the "textbook

account" which should have been charged to the various subject matter accounts.

529. When Charles Caruso informed me that the textbook money line was appearing as a negative number, I transferred the purchase of some of the books from the textbook budget line to the appropriate subject matter lines. As explained above and documented by the printout, I did not, as Arthur Cotugno falsely states, spend more money for textbooks than the Board of Education approved to be spent for textbooks. [E-13: Exhibit "12D".]

PREJUDICE AGAINST MALES/
EVALUATIONS OF MALES, ACCUSATION

551. In his 31 March 1992 RDDIR, Cotugno accuses me of giving females better evaluations than males in the period of the 1 July 1991-14 February 1992 Evaluation[...].

552. I did not in fact do any performance evaluations of females during my relevant 14 February 1992 Evaluation time period.

553. Moreover, there were no female administrators in District Office other than me — and I did not evaluate principals (i.e., Unit Administrators)[...]. [E-1: Exhibit "0"]

Donna J. Moss, Ph.D.

Sworn to before me
this 19th day of
April 2001

Notary Public
ANNA P GOODWIN-GREMER
Notary Public, State of New York
Reg. #01GO5025241
Qualified in Ulster Count
Commission Expires March 21, 2002

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

GREATER, AMSTERDAM SCHOOL DISTRICT
OFFICE OF'THE SUPERINTENDENT
MEMO

TO: John Ouatrini
Director of Pupil Services

FROM: Arthur P. Cotugno, Superintendent of Schools

RE: SED Communication Dated December 20, 1991 --PL 94-142 and, PL 99-457

DATE: December 26, 1991

It is appalling to learn that another instance has occurred which reflects unfavorably on your performance. This is the fourth time that a SED representative has had to inform the district regarding either the lack of information and/or timeliness in submitting grant applications required by your office. You were notified as far back as July of deliberate delays and inaccuracies regarding submission of necessary information and documentation to the Superintendent's office and the State Education Department.

If you believe for one minute that your negligence is going to go unheeded any longer you are sadly mistaken. It is becoming more apparent that you are unable to satisfactorily perform the duties and responsibilities of your position.

Arthur P. Cotugno

Copy: Personnel File

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

MEMO

To: Mr, Bert DeRose From: AHS Science Teachers

Re: Abdel Sharifi Date: November 26, 1991

Although there have been a number of incidents during his tenure as AHS Science Department Chairperson, Abdel Sharifi's deceitful and unprofessional actions today, toward Dr. Lynda Schuyler, have stretched our tolerance beyond reasonable limits to the point of exasperation.

We therefore find it necessary to go on record, stating the unified position of the Department staff: We no longer have any confidence or trust in, or respect for Abdel Sharifi as Department Chairperson.

We hope the administration takes our feelings under serious consideration for future actions or decisions.

cc; A. Sharifl/A . Cotugno
Dr. Moss /ATA

EXHIBIT
3R

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

Umberto DeRose, Principal December 2, 1991
Amsterdam High School
Amsterdam, New York 12010

Dear Mr. DeRose:

* * *

Mr. Sharifi allegedly attempted to get Mrs. Schuyler to sign an evaluation in a devious and underhanded manner. He requested she sign a paper stating she was receiving a box of slides he had handed her, when in fact, her evaluation was under the paper she was to sign. Mrs. Schuyler lifted the paper and confronted Mr. Sharifi with this, and his response was, to "just sign it, everyone does."

The mere fact that Mr. Sharifi chooses to conduct himself in such a manner leads one to wonder how he was selected to hold a position of authority over professional members of a Department. Not to mention the violation of Article XV, Section 4 of our Contract. The purpose of the evaluation is to be open and with full knowledge of the teacher, evaluate them in an attempt to improve instruction, not to deceive. The observation done on November 15, 1991, was not discussed and reviewed with the teacher within the seven (7) school day limit outlined in the Contract. Consequently, I respectfully request that you, as Principal of the building, or one of your Assistant Principals of your choosing, observe Mrs. Schuyler,

Very truly your,

Nicholas T. Miseno

NICHOLAS T. MISENO
cc: Arthur Cotugno /Mr. Sharifi/Dr.Moss /Dr. Schuyler

since it is quite apparent that Mr. Sharifi has lost all objectivity in his relationship with her. In fact, in view of the manner in which he conducts himself, one must wonder how much credibility he has with the Science Department as a whole.

* * *

Unless we hear from you regarding this matter by December 9, 1991, it will be necessary for us to take what we feel is a grievance, to the next step. As previously stated, we want the November 15, 1991 observation disallowed because of the expiration of time as allowed in the Contract.

Very truly yours,

NICHOLAS T. MISENO

cc: Arthur Cotugno
Mr. Sharifi
Dr. Moss ✓
Dr. Schuyler

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

To: Mr. Abdel Sharifi
From: Mr. Nicholas T. Miseno
Date: December 5, 1991
Re: Administrative complaint procedure as outlined in Article XVI section A, "Complaints against a teachers performance"
As a result of yesterdays meeting it has come to our attention that on several occasions you advised Dr. Schuyler that you received complaints from parents and students regarding her teaching techniques and effectiveness.

Dr. Schuyler asked you to name the complaintants and to identify the nature of the complaints and when they were made. To this request you replied that she would meet the people at the Open House. No one approached Dr. Schuyler at that time, so once again she asked you to identify the names of parents and students who complained to you. Your answer now was that you would name them at another time when you met with her.

On November 13, 1991 Dr. Schuyler wrote you a memo asking you for the information, exact names and complaints, to which you verbally responded you would " share the information at a later date." You stated at that time, "it isn't necessary to write memo items down. Just talk to me."

To date you have not responded to Dr. Schuylers memo requesting this information. This is a direct violation of Dr. Schuylers contractual rights as outlined in the contract.

I am now formally asking you to name the people who complained about Dr. Schuyler and to identify the nature of the complaints against her without further delay. Failure on your part to do so will result in a formal grievance.

* * * **Exhibit 3T**

E-13: INTERPERSONNAL RELATION AFFIDAVIT.

To: Bill Mycek:

From Jayne Steubing Jayne M. Steubing

Re: Donna Moss Complaint

Date: March 30, 1992

* * *

letter page 2 par. 2

On several occasions prior to July 1, 1991, D. Moss would remind me that I have to be a "team' player"[...]. She would not explain to me what she meant by this, but continued in this vein until Art was appointed Interim Superintendent. After that, her behavior toward me completely changed. She was patronizing and acted cooperative. (I suspect she perceived that Art and I had a positive professional relationship and she wanted to stay on his good side.) When Alan Brown was Superintendent, she treated me as he so often did - negatively. When Art became superintendent, she "polished his apple" by showing me the respect he expected her to show.

* * *

Art, himself [...] has noticed her change of heart all of a sudden (since July 1).

* * *

Appendix Note: Steubing letter cited in E-13, ¶306 as E-8: Exhibit "A": Exhibit "3"

Appendix Note: Bill Mycek was the GASD Attorney in 1992.

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

March 22, 1991
To Whom It May Concern:

If the memorandum is sent as written with the particular reference to the statement of part of the sentence reading, "loud enough I must note that you were heard outside of my office which had the door closed," I will take exception.

I was asked on March 21, 1991 by John S. Conwall if I heard Ron Bartman's voice projecting from Mr. Conwall's office on Friday, March 15, 1991. My response was affirmative. The fact of the matter lies with the impression that Mr. Bartman's voice was the only one heard. This is simply not the case. I have expressed my concern to Mr. Conwall, however, I feel ethically bound to state that other voices were heard in addition even though I was not asked that particular question.

Respectfully,

Pamela J. Ruf

cc: R. Bartman
J. Quatrini .
H. Alan Brown

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

GREATER AMSTERDAM SCHOOL DISTRICT
OFFICE OF THE SUPERINTENDENT

MEMO

TO: Board of Education Members

FROM Alan Brown
Superintendent of Schools

RE: Analysis of 1988-89 - 1989-90
Grievances and Arbitrations

DATE: December 5, 1989

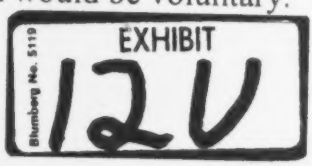
During our interview last evening of potential labor relations specialist candidates it occurred to me that some of you, especially the new Board members, might benefit from receiving an analysis of the ATA grievance and arbitration issues which have arisen during the past two years. I hope you find the following summary informative.

1988-89 SCHOOL YEAR

GRIEVANCE #88-89-1

Issue — Athletic coaches were required by Mr. Limoncelli to attend an evening workshop for parents and athletes.

Resolution — By letter, Superintendent informed ATA that coaches' participation would be voluntary.



E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

GRIEVANCE #88-89-2

Issue	Barkley School principal required teachers to supervise some students in their classrooms until buses arrived to pick them up. Some teachers had to remain beyond their contracted workday.
Resolution	Bus pick up times modified. Remaining students sent to cafeteria for aides to supervise. Grievance withdrawn by ATA.

GRIEVANCE #88-89-3

Issue	Letter of reprimand by Superintendent to Verney Vogel, an AHS vocational teacher, in response to parental complaint, placed in his personnel file.
Resolution	Letter modified to delete references made to previous assault incidents (improperly documented). Modified letter placed in personnel file. Grievance withdrawn.
Notes	This case, along with two (2) other parental complaint cases, strengthened District's right to place letters of reprimand and/or exoneration, in teachers personnel file.

GRIEVANCE #88-89-4

Issue	Principal of McNulty conducted unannounced classroom observation of Kenneth Bell, a tenured teacher.
Resolution	Issue presented for arbitration on September 29, 1989. Arbitrator's finding awaited.
Note	Crucial issue to District administrators. Loss of this management right will prevent proper and necessary supervision of staff.

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

GRIEVANCE #88-89-5

Issue	Principal of McNulty School investigated parental complaint against Kenneth Bell, a tenured teacher. Meeting summary prepared and placed in his personnel file.
Resolution	Presented to arbitrator on October 23, 1989. District made minor changes to wording of meeting summary. Modified letter placed in personnel file.
Notes	As with grievance #88-89-3, District's right to investigate and document parental complaints against teacher upheld.

GRIEVANCE #88-89-6

Issue	Barkley School Principal changed starting and ending time for non-homeroom teachers in order to provide early morning bus/student supervision.
Resolution	Assignment change withdrawn by Principal. Grievance withdrawn by ATA without prejudice.
Note	No change in length of workday for affected employees.

GRIEVANCE #88-89-7

Issue	Principal of McNulty School, by written directive, required teachers to monitor hallways at beginning and end of school day to control student behavior.
Resolution	Grievance withdrawn by ATA. Teacher supervision of hallways allowed.

GRIEVANCE #88-89-8

Issue	Barkley School Principal investigated parental complaints against Anne Marie Ukeritis, a

tenured teacher and placed cautionary letter in personnel file.

Resolution — Letter removed from personnel file in return for voluntary request for reassignment by teacher. Grievance withdrawn by ATA.

GRIEVANCE 88-89-9

Issue — Elementary teachers alleged that they were not receiving contracted 30 minutes duty-free lunch or planning time when they accompanied their students on field trips.

Resolution — Voluntary field trips by teachers don't guarantee duty-free lunch time. Lost specialist time usually addressed by building principal through rescheduling. Lunch and planning time issue for District required field trips (Conservation Day) not resolved. Conservation Day field trip to be reviewed by District Science Committee and alternatives explored. Grievance withdrawn by ATA without prejudice.

GRIEVANCE #88-89-10

Issue — District involuntarily transferred six (6) teachers against their "wishes and convenience."

Resolution — Two transfers rescinded, four made. Issue will be presented to arbitrator on January 9, 1990.

Note — District has had two previous arbitrations on Its right to transfer employees. Basic management right being challenged. Also, please note that one grievant, Cindy Flanagan, is on unpaid leave of absence and refused assignment to classroom opening at Bacon School.

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

GRIEVANCE #88-89-11

Issue	Christine Wicks, a foreign language teacher n on sabbatical leave from AHS for 1988-89, as was reassigned to Lynch Middle School for September, 1989. She grieved her reassignment.
Resolution	Grievance withdrawn with prejudice by ATA.

GRIEVANCE #88-89-12

Issue	Supervisor of Tecler Diagnostic Center prepared year-end evaluation on Maria Visalli, a tenured social worker. Didn't like comments, filed grievance.
Resolution	Teacher prepared rebuttal statement to be attached to evaluation (contractual right). Grievance withdrawn by ATA.

1989-90 SCHOOL YEAR

GRIEVANCE #89-90-1

Issue	Elimination of art, music, and physical education specialist time at kindergarten level grieved.
Resolution	Issue will go to arbitration. Arbitrator yet to be selected.
Note	Despite loss of specialist services, kindergarten teachers are receiving their contracted duty-free and lunch times like all other teachers in grades 1-6.

GRIEVANCE #89-90-2

Issue	Kindergarten teachers alleged that they were not receiving their contracted 30-minute daily duty-free time.

Resolution	Superintendent directed building principals to make sure duty-free time was provided. Grievance withdrawn by ATA.

GRIEVANCE #89-90-3

Issue	Kindergarten teachers alleged they were required to attend an afterschool workshop without required 24-hour notice.
Resolution	Superintendent apologized for mixup -- Late notification caused by October 9 Columbus Day holiday. Grievance withdrawn by ATA.

GRIEVANCE #89-90-4

Issue	Grievance filed by Marget Barnett, tenured guidance counselor at AHS, who was involuntarily assigned BRET Chairmanship at AHS.
Resolution	Will be presented to arbitration for resolution. Arbitrator yet to be selected.
Note	ATA demand for additional compensation affects BRET Chairpersons throughout District.

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

AMSTERDAM TEACHERS' ASSOCIATION

JAN 1 1 1990

AMSTERDAM SCHOOL DISTRICT
OFFICE OF SUPERINTENDENT

OFFICE OF THE
PRESIDENT
842-1218

Dear Alan:

In order to clarify District and Association positions in regard to Association grievance 89-90-5 and in order to develop a permanent record of certain events, the Association wishes to provide you with the following information:

1. As I had indicated in my last correspondence concerning the cited grievance, the Association is willing to accept the commitment of the District that District

EXHIBIT 12V

E-13: INTERPERSONNAL RELATIONS AFFIDAVIT

Administrators will provide twenty-four hour notice of "after school" meetings as well as deliver proposed agendas for those meetings twenty-four hours in advance of their beginning time.

2. On Tuesday, January 2, 1990, a meeting was convened by John Quatrini.

While notice for this meeting was dated December 22, 1989, no staff member received this notice until the day of the meeting and the original time frame was in "error"by exceeding contract limits. Furthermore, the proposed agendas were distributed at the meeting.

* * *

It is unavoidably obvious that either John Quatrini, the District or both are attempting to posture in anticipation of an arbitration hearing on the committee question.

Please be advised that this action will only serve to obfuscate the real issues and is totally without merit as to the grievance.

* * *

The Association respectfully requests that the District allows this grievance to proceed to hearing on its real merits absent "clumsily orchestrated" evidence which is fabricated for the purpose of making things appear to be what they are not in reality.

Yours truly,

Bruce

Bruce C.Miseno
President -ATA

copy: Martin Leukhardt, NYSUT Rep.
Daniel P. Baker

E-14 : RE COMPARATIVE QUALIFICATIONS

District Docket No 359

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS, Plaintiff, against

Civil Action No. 95-CV-1356 (LEK)(RWS)

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM

Defendants

MOSS AFFIDAVIT RE DISPARATE TREATMENT

* * *

MY COMPARATIVE QUALIFICATIONS WITH RESPECT TO THE JOB APPLICANTS THAT WERE HIRED FOR THE TWO NEW JOBS THAT I APPLIED FOR

86. As of June 1992 my comparative administrative qualifications were clearly and conspicuously superior to those of both Jan Dyer and Larry Trzaskos, the two persons who were hired to fill the two positions that replaced my Directorship when I was terminated [E-1: Exhibit "2H"].

87. Jan Dyer and Larry Trzaskos did not have Doctorate degrees. I received my Ph.D. degree from Syracuse University in Educational Administration in 1979 [E-1: Exhibit "A".

88. My predecessor in the position of Director of Instruction for 17 years had a Doctorate degree, and thus the position traditionally called for a person who held a Doctorate degree.

89. Jan Dyer and Larry Trzaskos did not have the breadth of K-12 building experience that I had.

E-14 : RE COMPARATIVE QUALIFICATIONS

90. At the time I applied for the jobs I had been a principal on every level of K-12 and had been tenured as a K-8 principal [i.e., which includes the elementary grades].[E-1: Exhibits "2H", p. 2]. [E-1: Exhibit "2A", p. 2: copy of my NYS Permanent School Administrator and Supervisor and School District Administrator's certificate].

91. Jan Dyer was an English teacher and part-time Chairperson who was a full 4 hierarchical levels below the position of Director and who, upon information and belief, had never held an administrative position of principal or even assistant principal.

92. Upon information and belief Larry Trzaskos only had experience as (or up to the level of) an elementary principal and had never been a central office administrator.

93. At the time I applied for the jobs I had central office administrative experience before I was hired as Director of Instruction and I had two and three quarters years experience as K-12 Director of Instruction in the GASD, and was in fact three quarters into my "tenure year" in that position. [E-1: Exhibit "2H", p. 1]

94. Upon information and belief Jan Dyer and Larry Trzaskos did not have the amount (if any) of professional publications in the field of curriculum and instruction and educational administration that I had [E-1: Exhibit "2H", p. 2].

97. Upon information and belief Jan Dyer and Larry Trzaskos did not have experience teaching graduate level courses in Educational Administration as I had. [E-1: Exhibit "2H", p. 1]

98. My objective comparative objective qualifications for the positions of Elementary and Secondary Director of Instruction were at the time of the employment decision clearly and conspicuously superior to those of the two candidates who were hired for the positions.

E-14 : RE COMPARATIVE QUALIFICATIONS

99. It should also be noted with respect to the issue of comparative qualifications that when I applied for and was hired for the Director of Instruction position in 1989 there was a "Doctorate desirable" stipulation on the job vacancy notice. [E-1: Exhibit "B": Copy of 1989 job vacancy notice].

100. Arthur Cotugno omitted the "Doctorate desirable" stipulation from the 18 June 1992 job vacancy notices for the Director of Elementary Instruction and the Director of Secondary Instruction positions. [E-1: Exhibits "2D" & "2E": Copies of 1992 job vacancy notices].

101. Both the 1989 Director of Instruction job vacancy notice and the June 1992 Director of Elementary Instruction and Director of Secondary Instruction job vacancy notices contained a "Building administration" experience requirement.

102. Dr. Jayne Steubing and I (two female candidates) were the only two in-house candidates that met both the "Doctorate desirable" stipulation and the "building administration" experience requirement. If Mr. Cotugno had retained the "Doctorate desirable" requirement on the 1992 job vacancy notices, then Dr. Jayne Steubing and I would have been the only two qualified applicants [...].

103. The June 1992 Director of Secondary Instruction vacancy notice contained the "building administration" requirement as noted in ¶ 101 supra. Jan Dyer, who Arthur Cotugno, the Board of Education, and the GASD, hired for this position, did not have "building administration experience". Jan Dyer was a chairperson, which was 2 levels below Building Principal and 1 level below Assistant Principal [E-1: Exhibit C"]. Chairpeople were not building administrators and did not belong to the building administrators union. I had building administration experience[...].

E-14 : RE COMPARATIVE QUALIFICATIONS

104. Moreover, Arthur Cotugno eliminated from the 1992 job vacancy notices the "Central office administrative experience is desirable" stipulation, which was present on the 1989 job vacancy notice when I applied for the Director of Instruction position (see E-1: Exhibits "B", "2D", & "2E"].

105. If the "Central office administrative experience is desirable" stipulation had been retained, then I would have been the only in-house candidate that met the complete set of qualifications since I had central office administrative experience before I was hired as Director of Instruction and I had two-and-three-quarters years experience as K-12 Director of Instruction in the GASD, and was in fact three-quarters of the way into my "tenure year" in that position.

106. Although the positions of Director of Elementary Instruction and Director of Secondary Instruction technically were "new" positions, actually they replaced my position of K-12 Director of Instruction and the two people who were hired for those positions replaced me after my termination. [E-1: Exhibit "F": Director of Instruction Duties and Responsibilities (1989); Exhibit "2D": Director of Elementary Instruction Duties and Responsibilities and "2E": Director of Secondary Instruction Duties and Responsibilities (1992).]

Donna J. Moss, Ph.D.

Sworn to before me on
this 19th day in / April 2001

Anna P. Goodwin Gremer

Notary public
ANNA P. GOODWIN-GREMER
Notary Public, State of New York/Reg. #01GO5025241-/Qualified in Ulster County /Commission Expires March 21, 2002.

E-15: MOSS DEPOSITION

District Docket No 418 & 442

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

DONNA JEANNE MOSS,

Plaintiff, Civil Action No. 95-CV-1356

-against-

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, et al,

Defendants.

STENOGRAPHIC MINUTES OF THE DEPOSITION of Plaintiff, DONNA JEANNE MOSS, held pursuant to Notice returnable on Wednesday, the 8th Day of August 2001 at 11:10 a.m. at the James T. Foley Courthouse, 445 Broadway, Albany, New York, before MARCI DeMURA, a Shorthand Reporter and Notary Public in and for the State of New York.

Deposition page 254

Q. So what you are saying, please correct me if I'm wrong, but as a matter of practice you customarily took notes at these meetings?

A. Yes.

Q. And that had nothing to do with Mr. Cotugno, that was your own personal practice?

A. Yes.

Q. So what you found discriminatory was Mr. Cotugno's request that you transcribe them?

A. Yes.

Deposition page 255

Q. And was anyone else taking notes?

A. Yes.

Q. And you felt it was discriminatory because he asked you to transcribe them?

A. Yes.

Deposition page 256

Q. How?

A. I wrote on each of the minutes of the meetings that I had to type up -- see I had abbreviated notes. There were abbreviations. Teachers is ts. Nobody would know that. I had to take a lot of time to take my notes and put detail into them so that they would make sense for the other people at the meeting who were all males and were taking minutes. I was asked as the only female at those meetings to take and do a stereotypical female task, which is to take those minutes and take them and make detailed minutes of those meetings and type them up. And I then indicated at the top of each of those as you have requested.

Deposition page 328

Q. When had you first talked to Mr. Brown about doing an evaluation or a recommendation for you?

A. I don't recall the exact date. It was in January or February sometime.

Q And why did you feel you needed a recommendation from Mr. Brown? What was the purpose of that?

A. The things that were happening in the district with Mr. Cotugno. I mean I couldn't get in to see him. He denied me access. I saw the white non-interracially married male directors going in there on a regular basis. I couldn't get in to see him. He was sending me badgering notes. He was doing a lot of things that were really hostile toward me including sending me two job vacancy notices.

E-15: MOSS DEPOSITION

If I was outstanding enough to be superintendent, I should have been outstanding enough to continue to be a director of instruction in the Amsterdam School District. And so Mr. Cotugno was doing a lot of hostile, badgering, negative kinds of things to me and I thought things that were retaliatory and so I asked Alan Brown for a reference.[...].

Deposition page 353

Q. You claim that Mr. Cotugno ordered you to go to a couple of these meetings. One being on February 3rd, 1992 the NYSCSAO meeting?

A. Yes.

Q. How did he order you to go to that?

A. Mr. Cotugno came to my office and asked me which day would be best, a Friday or a Monday, to hold the meeting for the chairs of the GASD response committees. And I told him I had a meeting of the New York State Congress of School Administrator Organization on one of those days, which was the date that you just indicated and that the other day would be better for me. Mr. Cotugno immediately said oh, well, I'm going to have the meeting on this other day. The day I couldn't come. But I thought -- I'm sorry. I lost my train of thought.

He was going to hold the meeting on the day when I was going to go to this meeting. Not on the day that I was free. And so I said, but I want to go to the meeting, I want to stay in the district and go to the meeting. The first chairs meeting. He said no, you're to go to that meeting. And I suggested options that were available. Possibly sending someone else, getting the information from someone else and he ordered me to go to that meeting instead of staying in the

district to attend a chairs meeting.

Q. When you say he ordered you, what did he say to you?

A. He told me I was not to stay in the district for the meeting. I was to go to the meeting. In word or substance something like that to that effect.

Q. How about another meeting at the end of March '92 for student performance data and outcomes in Guilderland, did Mr. Cotugno order you to go to that one also?

A. Yes.

Q. What were the circumstances about that?

A. He told me -- I can't remember if it was a flyer or not. He told me that I was to go to that meeting and he was going to also send someone else from the district, but I was to go to that.

Q. So did he tell you to go or did he order you to go? Order is a little strong.

A. He ordered me to the meeting. He said I had to go. There was no choice. Someone can tell you to do something and he told me to do so.

* * *

Deposition page 381

CERTIFICATION

I, MARCI DeMURA, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify that the foregoing is a true and accurate transcript of the proceedings reported by me, to the best of my knowledge and belief, in the matter held on August 9, 2001.

Date: September 10, 2001

MARCI DeMURA

E-16 COTUGNO DEPOSITION
District Docket No. 427 or 443

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
DONNA JEANNE MOSS,

Plaintiff, Civil Action No
-against- 95-CV-1356

THE ENLARGED CITY SCHOOL DISTRICT
OF THE CITY OF AMSTERDAM, et al,
Defendants.

EXAMINATION BEFORE TRIAL of the Defendant, ARTHUR P. COTUGNO, pursuant to Notice and held at the Law Offices of Horigan, Horigan, Lombardo & Kelly, P.C., 49 East Main Street, Amsterdam, New York.

DATE: December 3, 2001 at 10:00 a.m.

Deposition page 143

Q. Isn't it true that Ms. Zucker ceased employment with the Amsterdam School District some two years prior to this evaluation?
A. Yes.
Q. And that therefore Ms. Zucker, at least as you described and defined it, was outside the parameters of what this evaluation was to cover?
A. Yes

Depostion page 160

Q. When you had the opportunity to review the tenure status of Ron Limoncelli, did you approach Ms. Spagnola and ask what her opinion was?
A. I don't recall that I did.

Q. When you had the opportunity to review the tenure status of an individual by the name of Roger Seward, did you have any discussion with Ms. Spagnola about his job performance and ability to perform his tasks?

A. I don't recall.

Q Would you have?

Mr. Hayden: Objection to the form.

Q. As the superintendent of schools would it have been one of your job duties to consult with your secretary as to the benefits or detriments of an individual seeking tenure status?

A. No.

Deposition page 170

Q. One of the allegations that Ms. Dyer -- one of the things that Ms. Dyer had said to you was that Ms. Moss took credit for work done by other individuals, correct? Do you remember stating that in your response to Dr. Moss' interrogatories?

A. Yes.

* * *

Deposition page 171

Q. I am going to hand you what has been marked Plaintiff's Exhibit 16 and ask you if you can identify that?

A. Yes.

MR. LUNTZ: What's the date on that?
THE WITNESS: February 13, 1992

Q. And. in that memo doesn't Dr. Moss praise Ms. Dyer for making the program a success?

A. Yes.

Q. And it certainly is if not giving all the responsibility or all the acknowledgment to the

success of a program, she certainly is sharing that with Ms. Dyer, correct?

A. Yes.

Deposition page 173

Q. Ms. Dyer complimented Dr. Moss, if I am not mistaken. Is that right, Ms. Dyer complimenting Dr. Moss for her contributions to that program, correct?

A. Yes.

Q. So we certainly at least with those two documents have a mutual admiration society, if you will, between Ms. Dyer and Dr. Moss, correct?

A. Yes.

Deposition page 177

Q. Who was Patricia Trzaskos?

A. She was a health teacher in the district.

Q. And was it not her specific assignment to help

Deposition page 178

Mr. Limoncelli in coming up with a health curriculum, specially assigned to help Mr. Limoncelli prepare a health curriculum? * * *

Q. If you know, was Ms. Trzaskos specifically responsible to be the coordinator of health, physical education and interscholastic sports, if you know?

A. Yes.

Q. Mr. Cotugno, I hand you a two page document that is defined as Plaintiff's Exhibit 19 for identification. What would be that be, sir?

A. A memo from Dr. Moss to the kindergarten—sixth

Deposition page 179

grade staff regarding elementary health teacher.

Q. Was that a memo from both Dr. Moss and Mr. Limoncelli?

A. Yes.
Q. And doesn't that document somewhere in the body of it contain the statement -- doesn't it state that Ms. Trzaskos have an opportunity to continue the curriculum development that was begun last year?
A. Yes.
Q So she was in a large part the individual assigned by the district to prepare this health curriculum, was she not?
A. Yes.
Q. In addition to Ms. Trzaskos did Mr. Limoncelli also have the entire health advisory council, elementary teachers, elementary principals to aid her in the development of a health curriculum?
A. I believe so.

Deposition page 195

Q. Mr. Cotugno, I hand you what has been marked Plaintiff's 20 for identification. Can you identify that, please?
Q. Is that a memo that you received from Dr. Moss?
A. Yes.
Q. In that memo did she indicate that she had met with Mr. Giovanni and another individual by the name of Munoz?
A. Yes.
Q. And did she indicate in that memo that she had met with those two individuals and discussed the requirements of a drug training grant?
A. Yes.
Q. Mr. Cotugno, if you would, please, let me ask you, Plaintiff's Exhibit 21 is a memo, correct?

Deposition page 196

A. Yes.

Q. Would that be one that was addressed to you, sir, discussing again Mr. Giovanni? Let me rephrase that. Indicating that Dr. Moss had provided Ms. Trzaskos with health curriculum related material, is that what that memo indicates?

A. Yes.

Q. And, again, refreshing your recollection as to one of the complaints of Mr. Giovanni, he said plaintiff was not involved in the curriculum of health. Would you say that at least in these two instances you have reason to believe that, in fact, Dr. Moss was involved in the preparation of the health curriculum?

A. Yes.

Deposition page 202

Q. So the first mention of Ms. Ruf"s name apparently occurred in May of 2000?

A. Yes.

Q. In your opinion was Ms. Ruf the type of employee who would file a grievance if she felt that she had been improperly or unfairly treated?

A. Yes.

* * *

Q. Would she have been hesitant to file a grievance against you if she believed you deserved to have one filed?

A. No.

* * *

Deposition page 204

Q. "You know she filed a lawsuit, she filed a grievance at least one that you are aware of and she filed a lawsuit, correct?

A. Yes.

Q. Do you know if Ms. Ruf ever filed a grievance

against Dr. Moss?

A. No.

Q. She did not or you are not aware of any?

A. I am not aware of it.

Q. Certainly if it occurred while Dr. Moss was employed there you would have known about it?

A. Yes

Deposition page 241

Q. Certainly Dr. Moss comes to you as an individual with a fine record at that school, does she not?

MR. HAYDEN: Object to the form.

Q. Certainly Mr. Brown indicated that she was a stellar employee of the Amsterdam School District, correct?

A. Yes.

Deposition page 252

Q. Isn't it true though that administrators such as Dr. Moss and you for that matter document everything that they do?

A. Everything that is humanly possible to document.

Deposition page 253

I mean, at the end of a given day there is no way that I could document what actually transpired in the course of a day.

Q. But you certainly document everything that you have the ability to document, do you not?

A. To the extent that it's humanly possible. For a superintendent it's extremely difficult to do that as often as you might like.

Q. But it's done and practiced quite frequently by people in the position of either you or Dr. Moss, if for no other reason than to SYA, correct?

A. Right, to the extent.

Q. Would you agree with me though that certainly you would like to see people in your position, Dr. Moss' position, other administrators or principals document their activities in memo form?

A. Yes, that's very helpful.

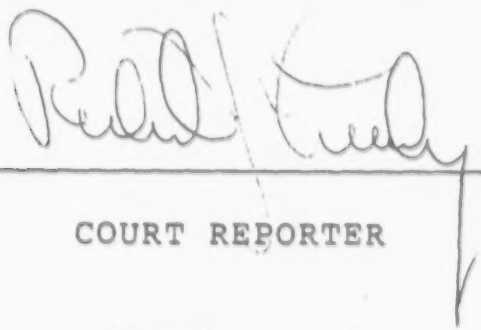
Q. Do you know if any other director was denied tenure because they wrote too many memos or if that was a part of any denial of tenure?

A. No.

Deposition page 259

CERTIFICATE

I, ROBERT J. LOWENBERG, Court Reporter and Notary Public in and for the State of New York, having reported the foregoing proceedings, do hereby certify that this is a true and accurate transcript of the same and the whole thereof.



COURT REPORTER

DATED: December 6, 2001

E-17 MOSS SUPPLEMENTAL AFFIDAVIT
[District Docket # 431]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Civil Action No. 95-CV-1356
(LEK)(RT)
6 April 2002

DONNA JEANNE MOSS,

Plaintiff,

against -

THE ENLARGED CITY SCHOOL DISTRICT OF THE CITY OF AMSTERDAM, THE BOARD OF EDUCATION OF THE GREATER AMSTERDAM SCHOOL DISTRICT, ARTHUR P. COTUGNO, CLAIRE LUDWIN, MICHAEL DECKER, DANIEL DE ROSSI, CHARLES FERRIS, MARK A. MILLER, as Voluntary Administrator of the Estate of JOHN MILLER, Deceased, FRANK PERSICO, EMANUEL ROSEN, RONALD LIMONCELLI, NEW YORK STATE DIVISION OF HUMAN RIGHTS, PAULA] SAWYER, KEVIN LYNCH, and JAMES BUESCHEN, in both their Official and Personal Capacities,

Defendants.

MOSS SUPPLEMENTAL AFFIDAVIT

1. A substantial portion of the Latino/Hispanic students in the GASD and Hispanic persons in the Amsterdam Latino/Hispanic community, including persons who staged demonstrations at GASD Board meetings and in the District, had light or dark brown and/or "black" skin and were of African origin, i.e., they were "black" people as illustrated by the pictures of protesters/activists Ivette Perez, Tama Seavey, Jose Maymi, & and GASD students annexed hereto and marked Exhibits "A", "B", "C", & "D".

2. After I was terminated from the GASD I learned that Laurence Trzaskos occupied the Director of Instruction's office that had been occupied by both myself and my

predecessor Dr. Wyszomirski and which was located in the space adjacent to and facing the Superintendent's office and that Jan Dyer occupied what was described to me as a small "cubby hole" office at the end of the Central Office building.

25. The composition of the Board that hired me in 1989 was not the same as the composition of the Board that terminated me in 1992 and all the Board members who voted to terminate me in 1992 did not vote to hire me in 1989. In fact only 3 persons [0. Miller, Decker, & DeRossi] out of a nine member Board fit that category. Moreover, the only female and the only Hispanic on the Board did not come to the 17 June 1992 Board meeting and so the vote to terminate me was not unanimous with respect to the total membership of the Board, it was only unanimous with respect to the white male Board members.

1990:	**1992:**
Reigh Carpenter - Yes to hire	**NOT ON BOARD** in 1992
Michael Decker - Yes to hire	On Board in 1992 – voted to terminate Plaintiff
Daniel DeRossi — Yes to hire	On Board in 1992 – voted to terminate Plaintiff
Rev. Diaz - **NOT ON BOARD**	On Board in 1992 – Absent Absent not at Board meeting
Shirley Donohue - No to hire	**NOT ON BOARD** in 1992
Charles Ferris - **NOT ON BOARD**	On Board in 1992 - voted to terminate Plaintiff
Claire Ludwin - No to hire	On Board in 1992 - Absent **Not** at Board meeting
John Miller - No to hire	On Board in 1992 – voted to terminate Plaintiff
Otto Miller - Yes to hire	On Board in 1992 – voted to terminate Plaintiff
Carlos Murillo - Yes to hire	**NOT ON BOARD** in 1992

Frank Persico - absent at vote	On Board in 1992 – voted to terminate Plaintiff
Emanuel Rosen - **NOT ON BOARD**	On Board in 1992 - voted to terminate Plaintiff

[E-1: Often cited Documents: Board minutes: Exhibits "H", "2A", & "2B"]. February 1992 evaluation (e.g., E-1: Frequently Cited Documents, Exhibits "0", "R", "W", & "Z" and E-8: Exhibit "A").

45. At no time under Mr. Brown's leadership did Chairpersons report directly to the Director of Instruction. They reported to the building principals and work that they did was assigned by or in coordination with the building principals. I had two modes of contact with the chairpersons: [1]. I was assigned to help set goals with the chairpersons and to evaluate them on whether they achieved their goals and I received a list from the personnel office of who I was responsible to evaluate; however, the principals also did their own separate goal setting and evaluation of the chairpersons. [2]. I was a resource person for chairpersons and I supplied them with administrative needs for their curriculum writing (i.e., curriculum writing came out of my budget) but always through or in conjunction with the principals (for example, both principals and I attended chairpersons meetings). Occasionally if principals were busy and I needed information for a grant or to give to Mr. Cotugno I would schedule a meeting with the chairpersons with me but such meetings were always scheduled through and in conjunction with the principals. Moreover, I explained all of this to Arthur Cotugno after an administrators' meeting in September 1991 and he specifically said that he understood and that I should keep doing it the way it was set up. [See also E-7: Moss Interrogatory Response 14, p. 231, ¶¶ 8-12.]

E-17 MOSS SUPPLEMENTAL AFFIDAVIT

Donna J. Moss

E-17
Moss
Docket #
431

Sworn to before me on this
6th day of April 2002.

NOTARY PUBLIC

CAROLINE BLASI
NOTARY PUBLIC OF STATE OF NEW YORK
No. 01BL5045270
Oualified in Ulster County
Commission Expires June 12, 2003

CENTRO CIVICO OF AMSTERDAM INC.

A-252 **EXHBIT**

E-17 MOSS SUPPLEMENTAL AFFIDAVIT

NEW YORK STATE DEPARTMENT OF HEALTH
Certificate of Marriage Registration

District Name: CITY OF SYRACUSE

This is to certify that the persons identified below were married on the date and at the place specified as shown by the duly registered license and certificate of marriage on file in this office.

GROOM Name:	JOSEPH First	LEONARD Middle	LEWIS Premarriage Surname

* * *

BRIDE Name:	DONNA First	JEANNE Middle	MOSS Premarriage Surname

* * *

08	05	86
Month	Day	Year

Exhibit S